TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 363

JUAN POSADOS, JR., AS COLLECTOR OF INTERNAL REVENUE; BEN F. WRIGHT, AS INSULAR AUDITOR; VINCENTE CARMONA, ETC., ET AL., PETITIONERS,

vs.

THE CITY OF MANILA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED MAY 4, 1926

CERTIORARI GRANTED JUNE 1, 1926

(31,898)

(31,896)

SUPREME COURT OF THE UNITED STATES

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G. R. No. 23551

United States of America

Philippine Islands

In the Supreme Court of the Philippine Islands

[Petition for mandamus]

THE CITY OF MANILA, Petitioner

VERSUS

JUAN POSADAS, JR., as Collector of Internal Revenue, VICENTE CARDOZA, as Insular Treasurer BEN F. WRIGHT, as Insular Auditor, and the METROPOLITAN WATER DISTRICT, Respondents

ORIGINAL JURISDICTION

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On January 8, 1925, the petitioner by its attorney filed in the office of the Clerk of the Supreme Court a petition for mandamus, which on January 10, 1925, was amended to read as follows:

[CAPTION AND TITLE OMITTED]

AMENDED PETITION

Comes now the petitioner, the City of Manila, by its attorney, the undersigned City Fiscal, and with the leave of

this Honorable Tribunal, respectfully amends his former petition, so as to read as follows:

I

That the petitioner is a municipal corporation organized under the provisions of chapter 60, title X, of Act No. 2711 of the Philippine Legislature, known as the Administrative Code, and is empowered to sue and be sued.

II

That the respondent Juan Posadas, Jr., is, and during the period of time mentioned in this petition was, the Collector of Internal Revenue of the Government of the Philippine Islands; the respondents Ben F. Wright and Vicente Carmona are, and during the same period were, the Insular Auditor and Insular Treasurer, respectively, of the Philippine Islands, and the respondent Metropolitan Water District is a public corporation created by Act No. 2832, with powers to sue and be sued.

III

That the petitioner is entitled to a part and portion, determined by law, of the internal revenue collected by the respondent, the Collector of Internal Revenue (see sec. 488, Adm. Code), as well as to a certain per cent of the one and one-half per cent tax imposed on merchants, manufacturers, and commission merchants (see sec. 3, Act No. 3065), and that petitioner's share of said internal revenue and one and one-half per cent tax does not constitute a credit or debt owing by, and due from, the Insular Government to the petitioner, but is a property of the petitioner, belonging and appertaining to it both as a province and as a municipality of the Philippine Islands (see sec. 495, par. 2, Adm. Code), used and to be used by the petitioner for the purpose of defraying the expenses necessary for its existence and operation.

IV

That the respondent, the Collector of Internal Revenue, in compliance with his ministerial duty imposed upon him by section 497 of the Administrative Code to pay quarterly to the petitioner, the allotments of said internal-revenue and percentage tax belonging to it, has been in the past drawing

warrants for said allotments payable to the petitioner; but that from and after the month of January, 1922, the said respondent has ceased to make such payments to the petitioner, and has drawn warrants for such internal-revenue and percentage tax allotments belonging to the petitioner, payable to the Metropolitan Water District, a water corporation created by Act No. 2832 of the Philippine Legislature.

V

That the petitioner is informed, and, therefore, alleges, that the transfer and payment of said allotments of the internal-revenue and percentage tax, belonging to the petitioner, to the said Metropolitan Water District has been made by the respondent Collector of Internal Revenue by and under certain instruction of the respondent Insular Auditor, dated January 5, 1922, a certified copy of which is attached hereto and made a part hereof, marked as Exhibit A.

VI

That the petitioner is also informed, and, therefore, alleges that the respondent Insular Auditor has instructed his co-respondent Collector of Internal Revenue to pay the said allotments of internal-revenue and percentage tax aforementioned, belonging to the petitioner, to the said Metropolitan Water District, instead of the petitioner, for the purpose of setting off certain alleged debts of the petitioner for alleged water service rendered it by the said Metropolitan Water District.

VII

That the petitioner, upon being informed of the impropriety, arbitrariness, and illegality of the payments which the respondent Collector of Internal Revenue, has been making by order, instruction, and indication of the respondent Insular Auditor, in favor of the other respondent, the Metropolitan Water District, its attorney, the undersigned Fiscal for the City of Manila, sent to said respondent Collector of Internal Revenue under date of November 10, 1924, a communication informing him that such payments to the Metropolitan Water District made without, and against, the consent of the petitioner, were illegal, and that from then on he should make such payments in favor of the City of Manila in accordance

with the provisions of section 497 of the Administrative Code, a copy of which said communication marked as Exhibit B is attached hereto and made a part hereof.

VIII

That in spite of the letter or communication sent by the petitioner, through its attorney, to the respondent Collector of Internal Revenue, the latter, following instructions of the other respondent, Insular Auditor, informed the petitioner by a communication bearing date of January 5, 1925, which is hereto attached and made a part hereof as Exhibit C, that he would continue making payments of the share belonging to the petitioner of the internal revenue and of the especial tax imposed by Act No. 3065, including that corresponding to the last quarter of the year 1924, in favor of the respondent Metropolitan Water District, and the petitioner believes, and, therefore, alleges that said respondent Collector of Internal Revenue will carry out such threats unless timely prevented from so doing by this Honorable Court.

IX

That there does not exist between the Metropolitan Water District, which is neither a governmental entity, nor office, nor branch of the Insular Government (see sec. 1, Act No. 2832), and the petitioner City of Manila, any account the settlement of which the respondent Insular Auditor could legally authorize and enforce.

X

That the petitioner does not owe anything to the Metropolitan Water District by way of alleged water service rendered by said District to said petitioner; and that the latter has up to the present time been questioning the power of said District to render and collect any bill for water supplied to the petitioner.

XI

That Act No. 2832 does not empower the Metropolitan Water District, either expressly or impliedly or in general terms, to charge for water consumed by the petitioner, from the water system of the City of Manila.

XII

That the petitioner, as successor of the rights and obligations of the defunct Ayuntamiento de Manila, is the fiduciary of the Carriedo funds of which the inhabitants of the present City of Manila are the fideicomisaries and beneficiaries, and with which funds together with its municipal revenues, it constructed, and then exploited and administered since the year 1878 up to the creation of the Metropolitan Water District, the Carriedo water system for the use and benefit of the said petitioner and the inhabitants of this city (see Sagrada Orden de Predicadores *vs.* Metropolitan Water District, 22 Off. Gaz., 741; and Vilas *vs.* City of Manila, 22 U. S. 345).

XIII

That the petitioner, upon its organization as a municipal corporation under Act No. 183 of the United States Philippine Commission, which went into effect on the 7th of August, 1901, was empowered by section 17 (*w*) of said Act to maintain a water system for the inhabitants of this city.

XIV

That the Carriedo water system not being sufficient to meet the present and future needs of the people of Manila and the latter having no funds available with which to undertake the construction of an adequate water system, the Organic Law of the Philippines, known as the Act of Congress of July 1, 1902, provided in its section 70 that, for the purpose of providing funds to construct sewers and an adequate water system for the City of Manila, the Government of the Philippine Islands should be authorized to permit said city to incur indebtedness, to borrow money, and to issue and sell registered or coupon bonds, to an amount not exceeding four million dollars.

XV

That, by virtue of the provisions of said Organic Law, the United States Philippine Commission, by Act No. 1323 of April 14, 1905, authorized the petitioner to incur an indebtedness of four million dollars and to issue bonds covering the amount of said indebtedness, for the purpose of raising funds for the construction of a sewer and drainage system and an-

other adequate system for the supply of water for the inhabitants of this city, and provided, among other things, that such indebtedness should be paid by permanent annual appropriations out of the funds existing in the Insular Treasury for public works and permanent improvements of the City of Manila, and that there be established under the Municipal Board of said city, a department of sewer and waterworks construction, whose expenses as well as the salaries of the officers and employees thereof, were paid by the petitioner.

XVI

That the petitioner, conformably to the aforesaid authority of law and with the funds obtained by the issue of the bonds above-mentioned, the capital and interest on which the petitioner had been paying annually out of its own collections and revenues, for the reason that the proceeds obtained from the exploitation of said systems were not enough, constructed an additional system for the supply of water, obtaining therefor the water of the Wawa River for a reservoir constructed in Montalban, Province of Rizal, Philippine Islands, from which the inhabitants of the territory comprised within said District are at present supplied with water, as well as from that of Carriedo during the hot season, and administered and exploited such water system at Montalban in conjunction with that of Carriedo, since the construction of both systems until the creation of said District.

XVII

That as fiduciary of the Carriedo funds, with which the water supply system bearing the same name was constructed with municipal financial aid, and as owner of the new system of the water supply of Montalban, the petitioner had been enjoying the benefit of the free use of water from both systems for the needs of its department offices, markets, and other municipal buildings, for sprinkling its streets, parks, and gardens, for extinguishing fire, for public hydrants from which that portion of the inhabitants who have no means with which to defray the expenses of a private water installation obtain their supply of water, ever since the aforesaid systems began their operations, publicly, constantly, and without any opposition or interruption.

XVIII

That in view of the constant increase of the population of Manila and of the difficulties, both economic and administrative, which the petitioner encountered in attending properly to such an important branch of public service as the supply of water, and with the object of extending the benefit of the use of pure and uncontaminated water from the water supply system of the City of Manila to the inhabitants of the towns bordering said city, to which the Manila population is gradually spreading, the Philippine Legislature, by Act No. 2832, created the Metropolitan Water District, including within its territory that of the City of Manila and those of the neighboring municipalities of Montalban, San Mateo, Mariquina, Pasig, Pateros, San Pedro Macati, San Juan del Monte, San Felipe Neri, Caloocan, Malabon, Navotas, Pasay, and Parañaque.

XIX

That the said Act No. 2832 did not have more object, and, in fact, did not do more than to transfer, from the petitioner to the Metropolitan Water District, the possession, administration, control, and management of the sewer and water supply systems of the City of Manila, and, to this effect, has provided, in its section 8, that the said District receive and assume all assets and liabilities together with the bonds sinking funds of said system the same as if it were a mere receiver or judicial depositary.

XX

That Act No. 2832 originated from the House of Representatives and was approved on or about the month of March, 1919, by said legislative body in Spanish, as per certificate of the Secretary to said House which is attached hereto, made a part hereof, and marked as Exhibit D, and therefore, in construing its provisions, the Spanish text should prevail over the English for the reason that said Act was approved by the Philippine Legislature after the 16th day of October, 1916 (Act No. 2711).

XXI

That as one of the liabilities of the water supply system of the City of Manila, and among the charges, obligations,

and responsibilities going with said system which constitute a part of said liabilities, is that of furnishing water free of charge to the petitioner, in its aforesaid capacities as owner and fiduciary, for all its uses and needs.

XXII

That the water supply system of the petitioner, now administered by the Metropolitan Water District, is a private property of the petitioner, acquired by it as a corporation representing the rights and interests of the inhabitants of this city, and not as agent of the Government of the Philippine Islands, that said Government did not have, either before or after the approval of Act No. 2832, any title of ownership to said system; that no governmental power or authority in or outside these Islands has up to this time provided or ordered, in whatsoever form, and the petitioner has not received, payment or any indemnity for such water supply system of the petitioner, or for the amounts which the latter has been putting up from its own funds to apply to the payment of the capital and interest of the bonds issued by it for the construction of said system, or for the alleged deprivations of the free use of water coming from said system; and, for that matter, neither in said Act No. 2832 nor in any other law or Act of the Legislature or of the Government of the Philippine Islands has a formal transfer been executed in favor of the said Metropolitan Water District of the Carriedo funds or of the dominion or right of ownership of the petitioner over the water supply system of Montalban, transfer which, by the way, would have been unnecessary for the purpose of conveying to said District the administration of the said system, as well as also is there any provision in the aforesaid Act or in any other to the effect that the petitioner should cease to use free of charge the water coming from said system, the only rights transferred to the above-mentioned District being those of possession, administration, and control over said system and the management and administration of the funds thereof; but if such transfer of said Carriedo funds and ownership over the water system of Montalban in favor of the said District and the deprivation from the petitioner of the right and privilege of using free of charge the water of said system should be understood as included in the

creation of the said District or implied from the grant of powers conferred to it by said Act, the latter, Act No. 2832, would be unconstitutional and void.

XXIII

That far from depriving the petitioner of any of its rights and privileges, saving only those already mentioned of possession, control, and administration of the aforesaid water supply system, the Philippine Legislature, in recognition precisely of such rights and privileges, has given the petitioner, through its representatives and officials, a majority of representation in the Board of Directors of said Metropolitan Water District, amending to this effect section 3 of Act No. 2832, by means of another Act, No. 3109; and has provided, further, that just as when the petitioner had in its charge and under its control and administration the said water supply system, the revenues and collections of the petitioner (sec. 5, par. 4, Act No. 2832) should remain subject to the incidents of the administration of said system by the Metropolitan Water District, which does not have assets of its own to answer for its operations and its solvency in meeting the capital and interests of the above-mentioned bonds issued by the petitioner and those which may be issued by said District.

XXIV

That, with the desire to work with equity, in expectation of a just act of reciprocity, and considering itself entitled to use free of charge the water supplied by the above-mentioned water supply system for being the sole and exclusive owner thereof, and for being, moreover, the trustee of the funds of the Carriedo water system and because of the fact of having been, since the beginning, in continuous enjoyment, in its aforestated capacities, of the right and privilege of using free of charge the water coming from said system for its own needs and those of the public, without its having been legally deprived of such rights and privileges, the said petitioner, in spite of the insistent and unfounded demands for payment and of the presentation of bills for water service by the said District, has not endeavored nor does it endeavor to levy and collect, and in fact it has not levied upon, nor collected real-estate tax, from said District, which, otherwise, it would have

been obliged to pay on the lands, buildings, and other constructions situated in the city, pertaining to the aforementioned sewerage and waterworks systems, nor has said petitioner also tried to collect from said District, and in fact the former has not up to the present time collected from the latter, any amount for the use and occupation of the streets and other public places of said city wherein are installed and laid the pipes, mains, sewers, and other constructions and apparatus pertaining to the above-mentioned systems, which said petitioner has perfect right to do and which it is doing with respect to other similar public service corporations, such as the electric railroad and light, gas, telegraph, and telephone companies, from which the petitioner, in its capacities above stated, collects a certain per centum of their gross income.

XXV

That, even supposing that the respondent Insular Auditor is empowered to settle accounts outstanding between the petitioner and the Metropolitan Water District, the said petitioner has up to the present time contested the bills of the latter for alleged water services rendered the petitioner for the reason that the same are not authorized by law, and that said Insular Auditor is not authorized to settle or adjust accounts which, not being based upon any provision of law, are only made so by an erroneous interpretation of the law by said Auditor, by disposing in favor of said District of funds clearly belonging to the petitioner, such as its share in the collections obtained by the enforcement of the internal-revenue laws and of Act No. 3065.

XXVI

That it is a ministerial duty on the part of the respondent Collector of Internal Revenue to make in favor of the petitioner quarterly allotments of the share of internal revenue collected by him, corresponding to said petitioner, and of its portion of the tax imposed by Act No. 3065 (sec. 497, Adm. Code).

XXVII

That there is no law authorizing the respondent Insular Auditor to prevent his co-respondent Collector of Internal Revenue from complying with his ministerial duty referred

to in the next preceding paragraph hereof, or to give the latter instructions to the effect that the above-mentioned allotments which, by clear and express provision of law, ought to be made in favor of the petitioner, should be made and paid in the name and in favor of the Metropolitan Water District; nor is said respondent Insular Auditor also authorized by any law to constitute himself a judge and arbiter of disputes regarding the interpretation of laws arising between a municipal corporation and a public corporation which does not belong to the Insular Government or any executive branch of the Government of the Philippine Islands.

XXVIII

That, after the filing of the original petition in this case, your petitioner has been informed by the respondent Ben F. Wright, Insular Auditor, that in spite of the writ of preliminary injunction issued against the respondent Juan Posadas, Jr., as Collector of Internal Revenue, and for the purpose of testing his alleged power and authority to enforce settlements of accounts between the City of Manila and the Metropolitan Water District, he would issue a warrant for the sum of twenty-five thousand seven hundred thirty-six pesos and sixty-one centavos (₱25,736.61) representing the apportionment of the City of Manila in the internal-revenue collections and special tax imposed by Act No. 3065, for the last quarter of 1924, and that he would issue the necessary instructions to the respondent Insular Treasurer to honor such warrant chargeable against the account "Provincial, Municipal, Internal revenue Income—fiduciary fund."

XXIX

That your petitioner is informed, and, therefore, hereby alleges that the respondent Vicente Carmona, Insular Treasurer, unless timely and properly restrained by this Honorable Court, will honor and pay the warrant above-mentioned and will comply with the aforesaid instructions of the respondent Ben F. Wright, Insular Auditor.

XXX

That the respondent Ben F. Wright, Insular Auditor, is without authority of law to issue a warrant by himself, much less

a warrant covering amounts payable and chargeable against the apportionment of the City of Manila in the internal-revenue collections and special assessment imposed by Act No. 3065.

XXXI

That the respondent Vicente Carmona, Insular Treasurer, is likewise without any authority of law to honor, cash, or otherwise pay out of the funds belonging to the petitioner as aforesaid, any check, warrant, or order of payment issued by the respondent Ben F. Wright, Insular Auditor, or by any other officer, except only after judicial determination of the present controversy.

XXXII

That, to permit such an open violation of the law by the herein respondents, the aforesaid warrants corresponding to the allotments of funds of internal revenue pertaining to the petitioner, collected during the last quarter of 1924, as well as those which may thereafter be collected and may be payable to said petitioner would be issued and made payable to the Metropolitan Water District in violation of the law, and to the serious detriment of the petitioner's interests in particular and of the public interests in general.

XXXIII

That, as a result of the acts of the respondents above related, the petitioner has suffered and will suffer irreparable damages, has encountered and will encounter serious and considerable embarrassments and obstacles in the discharge of its corporate and governmental functions, unless said respondents are immediately restrained and enjoined from such acts by this Honorable Tribunal.

XXXIV

That the Metropolitan Water District is hereby made a party respondent to these proceedings for the reason that it has a direct interest in the subject-matter of this litigation, such interest being adverse to that of the petitioner, and because said Metropolitan Water District is and will be the only one benefited by the erroneous and unlawful acts which the respondents Collector of Internal Revenue, Insular Auditor, and

Insular Treasurer have been doing or are contemplating to do, and which constitute the object of the present petition.

XXXV

That there does not exist any other plain, speedy, and adequate remedy in the ordinary course of law whereby the petitioner could prevent the continuance of the infliction of damages which are or may be occasioned by the aforementioned acts of the herein respondents.

Wherefore, your petitioner respectfully prays this Honorable Court:

1. That it issue a writ of preliminary injunction against the respondent Collector of Internal Revenue ordering him, his deputies, agents, and employees to abstain from issuing any warrant and from making any payment in favor of the Metropolitan Water District of any amount whatsoever out of the funds pertaining to the petitioner as its share in the internal revenues collected by said Collector of Internal Revenue and in the collections made by reason of the enforcement of Act No. 3065, during the pendency of this litigation.

2. That it issue a writ of preliminary injunction against the respondent Ben F. Wright, Insular Auditor, his deputies, agents, and employees to abstain from issuing any warrant or give out any instruction or order of payment to the Insular Treasurer or any other official, in favor of the Metropolitan Water District, for any amount whatsoever chargeable against the petitioner's allotment in the internal-revenue collections and special tax collected under Act No. 3065, and further to abstain forever from interfering in the disposition of such allotment of the petitioner, during the pendency of this case.

3. That it issue a writ of preliminary injunction against the respondent Vicente Carmona, Insular Treasurer, ordering him, his deputies, agents, and employees to abstain from honoring, cashing, or otherwise paying any warrant, check, or order of payment issued by his co-respondents, Ben F. Wright, Insular Auditor, and Juan Posadas, Jr., Collector of Internal Revenue, whether acting individually or collectively, against the funds belonging to the petitioner as its allotment of the internal-revenue collections and of the special assess-

ments provided for in Act No. 3065, during the pendency of this case.

4. That, after the hearing of this case, it issue a writ of mandamus ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal-revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled.

5. That, after the hearing of this case, it issue a writ of permanent injunction against the respondent Metropolitan Water District ordering it, its manager, or any of its duly authorized agents or representatives, to abstain from claiming, charging, or otherwise collecting from the petitioner any amount for water service or for any other services in connection therewith, heretofore or which may hereafter be rendered said petitioner.

6. That, after the hearing of this case, it issue a writ of mandamus ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees, or other persons acting in his stead to countersign and approve any check, warrant, or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sums of money as represent its share or allotment in the internal-revenue collections and in the special tax imposed by Act No. 3065.

7. That it grant the petitioner such other remedy as to the court may seem just and equitable.

Manila, P. I., January 10, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS } *ss.*
CITY OF MANILA

Guillermo B. Guevara, after being first duly sworn, deposes and says: that he is the attorney for the petitioner in the above-entitled case; that he has read the foregoing amended petition; that each and every allegation of facts contained therein is true according to his best belief and information.

GUILLERMO B. GUEVARA

Subscribed and sworn to before me this the 10th day of January, 1925, in the City of Manila, Philippine Islands, by Guillermo B. Guevara, attorney for the petitioner herein, who exhibited to me his cedula No. F–48665, issued at Manila, P. I., on February 9, 1924.

V. ALBERT

Exhibit A

BUREAU OF AUDITS
MANILA

9th Indorsement

JANUARY 9, 1922

Respectfully returned to the Collector of Internal Revenue.

Under section 588 of the Administrative Code, the Collector of Internal Revenue is hereby authorized to deduct the total amount of ₱46,263.93, stated in the next preceding indorsement from the aggregate sum of ₱66,598.66 due the City of Manila for certain apportionment of taxes as described in the two treasury warrants Nos. 733622 and 733639 for ₱44,952.77 and ₱21,645.89, respectively, drawn by that bureau in favor of the City Treasurer of Manila, which are being returned, uncountersigned, under separate cover, for cancellation.

For the remainder of the amount due the City of Manila, or ₱20,334.73, after deducting the obligation of the city to that bureau as authorized above, the Collector of Internal Revenue is requested, under the same section of the Administrative Code, to draw a warrant in favor of the Metropolitan Water District, Manila, in settlement of part of the accounts of the latter against the City of Manila now long standing.

After making the above adjustments, it is desired that the City Treasurer be advised thereof thru this office.

E. M. FULLINGTON
Insular Auditor

By (Sgd.) R. E. FERNANDEZ
Acting Assistant Manager
Department of Provincial-Municipal Audits

A true copy:

(Sgd.) NAZARIO NADURATA
Chief, Records Section

216677——2

Exhibit B

NOVEMBER 10, 1924

SIR: After reviewing the papers regarding the controversy between the City of Manila and the Metropolitan Water District for the payment of water supplied by the latter to the public of this city, I found that you, following advices from the Insular Auditor, have been applying the share corresponding to the City of Manila, considered both as a municipality and as a province, from the proceeds of internal revenue, to the payment of bills for water consumption of the Metropolitan Water District, and that up to the present time some ₱681,733.79 pertaining to the City of Manila as proceeds of taxes, franchises, and internal-revenue collections has not been given to said city, in open violation of sections 485 to 497 of the Administrative Code, but instead has been unlawfully paid to the Metropolitan Water District.

Without prejudice to instituting the proper action against the Metropolitan Water District for the recovery of this amount, I have the honor to request that from now on you refrain from making further payments out of this fund belonging to the City of Manila, to the said District, and that a warrant corresponding to the last quarter past, July to September, 1924, be issued in favor of the City of Manila as per the specific provisions of section 497 of the Administrative Code.

In taking the stand above-mentioned, I had in mind not only the provisions of the Penal Code (art. 393) which declare it unlawful and criminal for any public officer who shall apply any fund or property in his possession to any public use other than that for which such fund or property was intended, but also the fact that sections 588 and 624 of the Administrative Code, upon which the Insular Auditor apparently bases his authority to make the readjustment, are entirely inapplicable to the present case.

Attention is invited, in this connection, to the fact that the share of the City of Manila out of the proceeds of taxes, franchises, and internal-revenue collections which come to the possession of the Collector of Internal Revenue by operation of law is a trust fund, and as such must be delivered,

with or without requirement, to the city as per specific provisions of section 497 of the Administrative Code.

In view of the vital importance of this case and the necessity of settling this controversy as soon as possible, it is requested that this communication be answered with the least possible delay in order that this office may take the proper steps towards the protection of the city's interests.

Very respectfully,

GUILLERMO B. GUEVARA
City Fiscal

The COLLECTOR OF INTERNAL REVENUE
Manila, P. I.

I hereby certify that the above correspondence addressed to the Collector of Internal Revenue was forwarded to his Office on November 11, 1924 and receipted by one Mr. L. Endozo.

PAZ C. DE ASPILLERA
Record Clerk, City Fiscal's Office

MANILA, *January 8, 1925*

Exhibit C

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
BUREAU OF INTERNAL REVENUE
OFFICE OF THE COLLECTOR
MANILA

JANUARY 5, 1925

The CITY FISCAL
Manila

SIR: In connection with my communication to you dated January 3, 1925, I have the honor to advise that, in view of the 1st Indorsement of the Insular Auditor addressed to this Office and dated December 31, 1924, this Office will, after a period of 10 days counted from this date, proceed to issue warrants for the sums of ₱21,880.57 and ₱3,856.04 in favor of the Metropolitan Water District covering internal-revenue apportionment and apportionment under Act No. 3065, both

pertaining to the fourth quarter of the year 1924. This information is given so that, if desired, the City of Manila may institute any judicial action that it may deem proper and expedient. This communication supersedes that addressed to you on January 3, 1925.

Very respectfully,

(Sgd.) JUAN POSADAS, Jr.
Collector of Internal Revenue

Exhibit D

[Translation from Spanish]

PHILIPPINE LEGISLATURE
HOUSE OF REPRESENTATIVES
OFFICE OF THE SECRETARY
MANILA

JANUARY 6, 1925

I hereby certify that Bill No. 1596, introduced by the Special Committee on House Bill No. 1566 of Representatives Generoso and Santos (A.), and which is now Act No. 2832, originated in the House of Representatives and was approved in Spanish by the Fourth Philippine Legislature.

(Sgd.) FELICIANO GOMEZ
Secretary, House of Representatives

On January 8, 1925, the Supreme Court issued an order of injunction, which was superseded by another order dated January 10, 1925, which reads as follows:

[CAPTION AND TITLE OMITTED]

ORDER OF INJUNCTION

To the INSULAR TREASURER, HIS DEPUTIES, AGENTS, AND EMPLOYEES, *Manila, P. I.*

GREETINGS: By virtue of the order on this date issued by the Honorable Justice, Acting in Vacation, you and each of you are hereby commanded to abstain from honoring, cashing or otherwise paying any warrant, check, or order of payment issued by his correspondents, Ben F. Wright, Insular Auditor, and Juan Posadas, Jr., Collector of Internal Revenue, whether acting individually or collectively, against the funds be-

longing to the petitioner as its allotment of the internal-revenue collections and of the special assessments provided for in Act No. 3065, during the pendency of this case.

Fail not under penalty of the law.

Given by the Honorable James A. Ostrand, Associate Justice of the Supreme Court of the Philippine Islands, Acting in Vacation, this 10th day of January, 1925.

V. ALBERT
Clerk, Supreme Court, P. I.

On January 29, 1925, the respondents by their attorney filed in the office of the Clerk of the Supreme Court the following demurrer to the amended petition:

[CAPTION AND TITLE OMITTED]

DEMURRER

Comes now the undersigned in behalf of the defendants in the above-entitled action, and demurs to the amended petition for mandamus on the following grounds:

I

That the court has no jurisdiction of the subject of the action, in that—

Under the provisions of section 24 of the Act of Congress of August 29, 1916, popularly known as the Jones Law, and section 588 of the Administrative Code of 1917, as amended by Act No. 3066, the defendant Insular Auditor has exclusive jurisdiction over the settlement of accounts between the executive branches of the Philippine Government and the different bureaus, offices, provinces, and municipalities of the Philippine Islands. The Metropolitan Water District is one of the executive branches of the Government, and is, furthermore, a province within the meaning of sections 588 and 593 of the Administrative Code, as amended by Act No. 3066.

II

That the petition does not state facts sufficient to constitute a cause of action; for

1. The petitioner has another plain, speedy, and adequate remedy in the ordinary course of law, without resorting to mandamus proceedings. Sections 24 and 25 of the Jones Law

and sections 653 and 656 of the Administrative Code of 1917 provide the means for appealing from the decision of the Insular Auditor. It is not alleged in the petition that the petitioner has exhausted said remedy;

2. The question of title of ownership to property is raised by the petition (see paragraphs XVII and XXII thereof) and is necessarily involved in the present action; and

3. The petitioner is not entitled to free water service from the Metropolitan Water District; for—

(*a*) Section 9 of Act No. 2832, the charter of the Metropolitan Water District provides that said entity "shall *own* and *control* all the sewer and water distributing systems of the City of Manila and of the municipalities comprising the District and shall charge and collect a *uniform* rate for all services rendered, whether to any person, *corporation*, firm, *governmental body, municipal entity*, religious or charitable institution" (italics ours); and pursuant to section 8 of the same Act the District Board received and assumed in behalf of the District "all assets and liabilities pertaining to the sewerage and waterworks system of the City of Manila, together with the sewerage and waterworks sinking funds, etc."

(*b*) The waterworks and sewerage system is of a public nature and was formerly administered by the City of Manila as an agency of the State but was never owned by it in its private or proprietary capacity.

(*c*) The Philippine Legislature had full power to dispose of and administer said system by any suitable agency; and in Act No. 2832 gave the ownership, control, and administration of said system to the Metropolitan Water District, with the duty to collect a uniform rate for all services rendered to municipal entities, among others, without excepting the City of Manila.

(*d*) While governmental bodies, bureaus, offices, provinces, and municipalities are exempt from taxation, they are all subject, without exception, to the charges and fees imposed by each for supplies furnished or services rendered by it to the others. This practice is perfectly legal and is in accordance with the best business methods.

(*e*) The greater part of the petition consists of conclusions and inferences, both of law and of fact, matters of evidence,

surplusage, and irrelevant matter, which are not deemed admitted by a demurrer (Alzua and Arnalot *vs.* Johnson, 21 Phil., 308, 309), and we respectfully pray the court to wholly disregard them.

In view of the foregoing, it is prayed that, after hearing, the preliminary injunctions issued be dissolved and the petition dismissed with costs.

Manila, January 29, 1925.

ANT. VILLA-REAL
Attorney-General

Received copy this 29th day of January, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

After hearing argument on the above demurrer, the Supreme Court on September 22, 1925, overruled same by the following order:

In case R. G. No. 23551, The City of Manila *versus* Juan Posadas, Jr., etc., *et al.*, the court ordered that the demurrer interposed to the complaint is hereby overruled, and the respondents are required to answer within ten days from notice hereof. Messrs. Justices Johnson and Ostrand dissented. Mr. Justice Villa-Real did not take part.

On October 1, 1925, the respondents by their attorney filed with the Supreme Court their exception to the above order, as follows:

[CAPTION AND TITLE OMITTED]

EXCEPTION

Come now the respondents in the above-entitled action and take exception to the resolution of this Honorable Court of September 22, 1925, overruling the demurrer interposed by them.

Manila, October 1, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 1st day of October, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

On October 1, 1925, the respondents by their attorney filed with the Supreme Court the following:

[CAPTION AND TITLE OMITTED]

ANSWER

In answer to the petition in the above-entitled action, the respondents allege:

I

That they admit the allegations contained in the first and second paragraphs of the petition; and

II

That they deny, all and singular, the allegations contained in the other paragraphs of the petition, except those that in the following special defense are specifically admitted.

SPECIAL DEFENSE

As a special defense, the respondents aver:

1. That when the water and sewerage system referred to in the petition was under the administration of the sewer and waterworks division of the Engineering and Public Works Department of the City of Manila, the other departments of the city paid for water and other services furnished to them by said division;

2. That the Metropolitan Water District, since its organization in the year 1919 up to the present, has been furnishing water and rendering water services to the Government of the City of Manila;

3. That the government of the City of Manila has been voluntarily paying to the Metropolitan Water District for some of the water and water services above-mentioned in the amounts, for the purposes, and for the period specified in the statement marked Exhibit A attached to this answer and made a part thereof;

4. That on January 28, 1924, a supposed majority of the Board of Directors of the Metropolitan Water District passed a resolution exempting the government of the City of Manila from fees for the water consumed by the fire and public hydrants installed in said city; but upon appeal duly taken by the minority of said Board to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of

Act No. 3109, the Governor-General in an indorsement dated September 18, 1924, reversed the above resolution of the alleged majority of the Board and decided "that the City of Manila shall pay for all services rendered by the Metropolitan Water District." A copy of the correspondence in regard to the above resolution, appeal, and decision, marked Exhibit B, is hereto attached and made a part hereof;

5. That on August 11, 1924, a majority of the Board of Directors of the Metropolitan Water District approved a resolution to the effect that the Secretary of the Interior be "requested to recommend to the Legislature the amendment of the Organic Act of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants"; but the minority members of the Board duly appealed from this resolution to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, and the Governor-General rendered the same decision mentioned in the next preceding paragraph. A copy of the correspondence referring to this matter, marked Exhibit C, is hereto attached and made a part hereof;

6. That on November 17, 1924, the Board of Directors of the Metropolitan Water District unanimously approved Resolution No. 21 (*a*), entitled "A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District," as shown by the excerpts, marked Exhibit D, attached hereto and made a part hereof; that section 3 of said resolution provides that—

"Unmetered water consumption shall be restricted to the following services and the charges therefor shall be at the following rates:

"Street sprinkling within the limits of the City of Manila, five centavos per cubic meter.

"Street sprinkling in any other municipality of the District, ten centavos per cubic meter. The amount of water consumed for street sprinkling shall be reported monthly and certified as to its correctness by the municipal president, or some official designated by him for this purpose.

"Park sprinkling, where no meter can be conveniently pro-

vided, five centavos per cubic meter for such amount of water as shall be determined monthly by estimate based upon reports by the park officials.

"Public hydrants, in the city limits, five centavos per cubic meter; outside of the city limits, ten centavos per cubic meter. The amount of water shall be determined monthly by estimate based on an average of the reading of such meters, on public hydrants, as are equipped with meters.

"Storm drains and gutter flushing, four centavos per cubic meter for the estimated amount of water consumed monthly."

Section 4 of said resolution provides that—

"The charges for fire hydrants and automatic sprinklers, shall be as follows:

"For each public fire hydrant, one hundred and twenty pesos per annum.

"For each private fire hydrant, one peso per month.

"For two hundred sprinklers or less, forty pesos per annum; for every additional sprinkler over two hundred and up to one thousand, twenty centavos each per annum; for every additional sprinkler over one thousand and up to two thousand, fifteen centavos each per annum; and for every additional sprinkler over two thousand, ten centavos each per annum."

7. That the Meropolitan Water District has been sending bills to the government of the City of Manila for the collection of the value of the water and water services which it had been furnishing to said city; but while said government has been paying some of those bills it has refused to pay others;

8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066;

9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper;

10. That the Insular Auditor then made demand on the City of Manila for the payment and settlement of said claim, advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand;

11. That thereupon the Insular Auditor instructed the Collector of Internal Revenue that thereafter and until further notice, all warrants covering the internal-revenue collections allotted to the City of Manila be drawn by said Collector in favor of the Metropolitan Water District instead of said city as theretofore;

12. That, by virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue for the purpose of putting the present question to a test, the latter officer issued warrant No. 636, dated December 9, 1924, for the sum of ₱21,880.57 and warrant No. 638 dated December 23, 1924, for the sum of ₱3,856.04 both covering the internal-revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue;

13. That on January 5, 1925, the Collector of Internal Revenue, in answer to a communication from the City Fiscal, advised the latter that, pursuant to subsequent instructions from the Insular Auditor, he would, within ten days from said date, proceed to issue the warrants for the above-mentioned sums, in favor of the Metropolitan Water District, but due to the preliminary injunction issued in the present case the Collector of Internal Revenue was prevented from doing so.

In view of the foregoing, it is respectfully prayed that the petition be dismissed with costs against the petitioner.

Manila, P. I., October 1, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 1st day of October, 1925.

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

Exhibit A

Statement of services rendered by the Metropolitan Water District to various departments of the City of Manila, "voluntarily" paid by the City Treasurer

Bill No.	Period of service	Nature of service	Markets and slaughter-houses	Offices, schools, police, fire, reformatories, stables, etc.	Parks and cemeteries	Plumbing	Date paid	Check No.
849	January, 1922–March, 1922	Water and sewer		P19.35			11-22-22	4191
902	January, 1922–June, 1922	Maintenance of public hydrants				P1,960.24	10-11-22	3391
917	April, 1922–June, 1922	Water, sewer, etc		1,070.46			do	3351
918	do	do		39.13			do	Do.
920	do	do		48.86			do	Do.
922	do	do		317.28			do	3920
925	do	Installation of water meter				159.54	do	Do.
1017	July, 1922–September, 1922	Maintenance of public hydrants				417.13	11-22-22	4191
1033	September 15, 1922	Installation of public hydrants				297.78	do	Do.
1092	July, 1922–September, 1922	Water, sewer, etc		28.98			do	4203
1093	do	do		45.50			12- 9-22	4267
1095	do	do		262.61			11-22-22	4300
1096	do	do		1,228.36			do	4239
1121	October 11, 1922	Removal of public hydrants				56.17	1-29-23	Do.
1137	October 1–31, 1922	Maintenance of public hydrants				163.85	do	4758
1145	November 1–30, 1922	do				192.66	do	Do.
1168	August 28, 1922	Installation of public hydrants				86.41	do	Do.
1212	October, 1922–December, 1922	Water, sewer, etc		20.13			do	Do.
1224	do	do		890.59			do	Do.
1225	do	do		250.57			do	4798
1236	December 4, 1922	Changing location of public hydrants				27.07	do	4774
1389	January, 1923–March, 1923	Water, sewer, etc		114.70			do	4798
1393	do	do		2,787.19			12-31-24	11098
1398	do	do			1,019.49		1-15-25	11244
1550	April, 1923–June, 1923	do			1,334.23		7-25-24	9613
1553	do	do		21.20			do	Do.
1566	do	do		1,516.84			12-31-24	11098
1631	July, 1923–September, 1923	do			1,489.83		1-15-25	11244
1655	do	do		32.00			7-25-24	9613
1718	do	do		3,007.51			12-31-24	11098
1720	do	do		31.75			1-15-25	11244
1802	October, 1923–December, 1923	do		17.30			12-24-24	11043
1829	do	do		2,716.42			12-31-24	11098
							1-15-25	11244

1830	....do	....do			1,502.79		7-25-24	9613
1836	....do	....do		20.80			12-24-24	11043
1879	January 1-31, 1924	....do				290.85	7-25-24	9613
1919	February 1-29, 1924	Maintenance of public hydrants				249.83	....do	Do.
1937	March 1-31, 1924	....do				470.63	....do	Do.
2010	January, 1924-March, 1924	....do		3,112.72			8-14-24	9830
2024	....do	Water, sewer, etc		1,937.31			11- 4-24	10579
2025	....do	....do	₱2,626.11				9-18-24	10228
2030	....do	....do		29.40			8-14-24	9830
2031	....do	....do		737.50			10-17-24	10483
2033	....do	....do		43.09			8-14-24	9830
2034	....do	....do		10.05			....do	Do.
2036	....do	....do		828.97			....do	Do.
2039	....do	....do		81.00			9-18-24	10228
2137	July 28, 1924	Removal of public hydrants					10-17-24	10483
2151	April, 1924-June, 1924	Water, sewer, etc		711.65		426.80	11- 4-24	10579
2152	....do	....do		249.15			10- 7-24	10303
2153	....do	....do		627.27			12-24-24	11043
2162	....do	....do		9.00			....do	11043
2163	....do	....do		35.42			9- 1-24	10062
2166	....do	....do		33.38			12-24-24	11043
2277	....do	....do		15.00			12- 2-24	10825
2351	July, 1924-September, 1924	....do		19.64			....do	10849
2352	....do	....do		66.51			12-15-24	10977
2354	....do	....do		46.73			12- 2-24	10830
2356	....do	....do		817.20			12- 2-24	10849
2358	....do	....do		305.09			12-15-24	10977
2364	....do	....do		981.46			....do	Do.
2406	....do	....do		3,154.19			....do	Do.
	Total		2,626.11	28,339.26	5,346.31	4,798.96		

A. GIDEON
Manager, Metropolitan Water District

Exhibit B

Copy of the correspondence relative to the appeal of the minority members of the Metropolitan Water District Board against the resolution of said Body exempting the City of Manila from the payment of rental and water charges for the fire hydrants and public hydrants installed in the said city.

"*Resolved*, That it is the sense of the District Board that the City of Manila is under no legal duty to pay any rental or water charges for the fire or public hydrants installed in said city, and that any resolution heretofore adopted concerning the collection or reduction of rentals or water charges for said fire and public hydrants be, and it is hereby, annulled and given no effect."

(Passed by the Metropolitan Water District Board in its meeting held January 28, 1924.)

JANUARY 29, 1924

The Honorable, the SECRETARY OF THE INTERIOR
(Thru the Metropolitan Water District Board)
Manila.

SIR: In pursuance of the provisions of section 2 of Act No. 3109, which amended section 4 of Act No. 2832, the undersigned member of the Metropolitan Water District Board hereby appeals from the resolution of a majority of the Board of Directors passed on January 28, 1924, as follows:

"*Resolved*, That it is the sense of the District Board that the City of Manila is under no legal duty to pay any revenue for the fire and public hydrants installed in said city, and that any resolution heretofore adopted concerning the collection or reduction of rentals for said fire and public hydrants be and it is hereby annulled and given no effect."

The reasons for this appeal are as follows:

First. The Metropolitan Water District having been created by Act No. 2832, as amended by Act No. 3109, of the Philippine Legislature is not competent to question the legality of such Acts and is bound by their provisions.

Section 9 of Act No. 2832 provides: "The Metropolitan Water District shall own and control all the sewer and water distributing systems of the City of Manila and of the municipalities comprising the District and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution." The District Board cannot, therefore, render free service to the City of Manila, nor can it exempt the City of Manila from payment for services rendered to it when it is charging and collecting for such services from other municipalities in the District. The undersigned is of the opinion, therefore, that the resolution passed by the majority of the Board is illegal, being contrary to section 9 of Act No. 2832 above quoted.

Second. The undersigned is of the opinion that even tho it were legally possible to do so, it is contrary to public policy to exempt the City of Manila from the payment of services rendered to it. The expenses of the District must be paid from its income. The District is now undertaking to develop a new and larger supply of water for the District. Sanitation and public health make it advisable, as soon as an adequate supply of water is developed, to use every endeavor to extend water and sanitary installations to the homes of the poorer people of the District. The estimates which have been made show that, with the development of the new proposed water supply, the entire income of the District will be required to meet its increased fixed charges and, in fact, for a short time in 1932 or 1933, that a deficit will be incurred. If, therefore, the City of Manila is to be exempted from the payment of services rendered to it by the District, it will be necessary for the District to raise its rates not only to residents of the City of Manila, but also to residents of other municipalities of the District, and at a time when every endeavor should be made to increase water and sanitary installations by the poorer people.

It seems to be the opinion of some of the officials of the government of the City of Manila that charges for fire and public hydrants were not previously paid by the city. In this the undersigned is of the opinion that such officials are misinformed. When the water and sewer systems were

under the direct control of the City of Manila, its expenses and its fixed charges were met by appropriations from public funds. The income from the water and sewer systems was insufficient to meet such expenses and fixed charges. The undersigned has been informed that this deficit amounted annually to approximately ₱500,000, which was met by appropriations. The City of Manila is not, therefore, incurring new expenses when it is called upon to pay for services rendered by the District.

The City Treasurer has pointed out that the District has an actual surplus on December 31, 1923, of ₱1,579,621.91. He has, however, overlooked the fact that this surplus is made up principally of capital assets which have been acquired by payments into the sinking fund of the outstanding bond issue, and further that the greater part of this surplus consists of indebtedness of the City of Manila to the District. Actual cash on hand as of December 31, 1923, was but about ₱500,000. Furthermore, as pointed out above, there can be no reduction in the income of the District without resulting in a serious deficit when it becomes necessary to make payments of fixed charges against the bond issues which it will be necessary to emit for the purpose of extending the system to give an adequate supply of water to the residents of the District.

The undersigned also is of the opinion that those favoring the resolution have confused the obligations of the City of Manila to serve its residents with the purposes and obligations of the Metropolitan Water District. It undoubtedly is an obligation of the City of Manila to give fire protection and to render other services in which water is used; for those services the City of Manila collects taxes. The fact that no direct charge is made by the city for some of the services so rendered does not make it incumbent upon the Metropolitan Water District to render such services to the city without charge. In fact, the District is under the direct obligation to charge the city for services rendered by the District, and this obligation is fixed by law and can be avoided neither by the District nor by the city.

Third. The resolution as passed by the majority of the Board did not receive the number of votes required by law.

Section 2 of Act No. 3109, which amended section 4 of Act No. 2832, provides that "four affirmative votes shall be necessary for the adoption of any resolution or motion, except as herein otherwise provided." Five members were present at the meeting held on January 28, 1924: two members voted against the resolution. The resolution did not, therefore, receive four affirmative votes, altho in an attempt to give the required number of votes Mr. Artiaga voted twice, once in his capacity as Acting Mayor and again in his capacity as City Engineer. The undersigned is of the opinion that this was improper and illegal and that, therefore, the resolution did not receive the number of votes required by law.

(Sgd.) H. B. POND
Member, Metropolitan Water District Board

JANUARY 28, 1924

SIR: Pursuant to the provisions of section 4 of Act No. 3109, amending some sections of Act No. 2832, the undersigned, member of the Metropolitan Water District Board in representation of the Director of Public Works, hereby appeals from the decision handed down on January 28, 1924, by the majority of said Board on the claims of the Metropolitan Water District against the City of Manila for water service. On this controversy, which has been pending decision for the last four years, the Attorney-General rendered a very comprehensive and detailed opinion, copy hereto attached, on November 1, 1919, and the undersigned wishes to submit same in support of his dissenting vote in the meeting and of the appeal hereby presented. The points of the undersigned, discussed in detail in the cited opinion of the Attorney-General, are hereby discussed in brief.

The City of Manila insistently refuses to settle the claim of the Metropolitan Water District against it on the "ground that it is still the owner of all the sewer and water distributing system within its limits because it has never been compensated for the taking away of its proprietary rights in and to such system, and that if this were the intention of the Legislature in passing Act No. 2832, said Act is unconstitutional, being contrary to the provisions of section 3 of the Jones Law."

It is admitted that the sewer and water systems belonged, before their transfer to the Metropolitan Water District, to the City of Manila, but the city owned the property not in its corporate capacity but as an agency of the Government. This fact is so because the system is not property of private but of public nature and as such the Legislature of the land can transfer it to the possession and control of another agency of the Government, in this case the Metropolitan Water District—without any compensation to the former owner. Moreover, when the City of Manila was authorized to float bonds by Act No. 1323 for the construction of the waterworks system the Insular Government was in effect the guarantor of the payment of the bond indebtedness.

The evident intention of the Philippine Legislature in passing Act No. 2832, is to transfer the administration and control of the system to the Metropolitan Water District without compensation to the City of Manila. The city's claim to the effect that the law, if that were the intention of the Legislature, is unconstitutional being against the provision of the Jones Law, is untenable, because the overwhelming weight of authorities is to the effect that the Legislature can transfer the control and administration of a public water system without any compensation to the former administrator. The case of Doil *versus* McIntyre (7 Houston 44, 40 Am. St. Rep. 109) which is cited by the Attorney-General in one of his memorandums applies four square to this particular case. In that case the Legislature of Delaware passed a law creating for the City of Wellington a Board of Water Commissioners composed of three citizens, to which Board should be transferred a waterworks system which at that time belonged to and was under the control of the said city, *authorizing the Board at the same time to charge the city for water* used or consumed by it. The constitutionality of said law was attacked on the ground that it deprived the city of its property without due process of law. The Supreme Court of Delaware held that the law was constitutional and, among other things, said:

"Even if the waterworks system of the city were, before the passage of the law establishing a "Board of Water Commissioners" under the control, administration, and care of the municipal council in whatever capacity, * * * the

Legislature had the power to alter, or change the control, administration, and care of the system whenever it deemed it convenient, because such change of control or administration, as long as it does not amount to change of the purpose or object for which the system was established, does not affect any right acquired by the city or the municipal corporation against the State."

Act No. 2832 being constitutional the Metropolitan Water District can charge the City of Manila for the use of the system and water under section 9 of said Act. In fact, the District is by duty bound to charge the City of Manila for water service because an exemption granted to the city will be a discrimination against other consumers of water and users of the system. The fact that at the time the system was under the control of the city the other departments of the municipal government did not pay to the department in charge of the waterworks for the water consumed by them has no material bearing on the question and the Metropolitan Water District is under no obligation to follow that practice, which at any rate is extremely unbusinesslike.

Very respectfully,

(Sgd.) E. QUISUMBING
Member, Metropolitan Water District Board

The Honorable, the SECRETARY OF THE INTERIOR
(Thru the Metropolitan Water District Board)
Manila.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
METROPOLITAN WATER DISTRICT
MANILA, P. I.

1st Indorsement

JANUARY 30, 1924

Respectfully forwarded to the Honorable, the Secretary of the Interior, Manila, inviting attention to the two attached letters of Mr. Horace B. Pond and Mr. Emilio Quisumbing, members of the Metropolitan Water District Board, appealing from the resolution adopted by the majority at the special meeting held on the 28th instant.

Enclosed herewith are all papers bearing upon the discussion of this matter.

By direction of the District Board:

(Sgd.) JOSE F. RAMOS
Secretary-Treasurer

The foregoing appeal of the minority members of the Metropolitan Water District Board was forwarded by the Secretary of the Interior to the Governor-General by indorsement of May 16, 1924, and the same was decided by the Governor-General simultaneously with the other appeal on the same subject, by indorsement dated September 18, 1924, which reads as follows:

"OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

3rd Indorsement

"MANILA, September 18, 1924

"Respectfully returned to the Honorable, the Secretary of the Interior, Manila, hereby sustaining, under the provisions of Act No. 3109, section 4, the within appeal of the minority of the Board of Directors of the Metropolitan Water District. It is hereby decided that the City of Manila shall pay for all services rendered by the Metropolitan Water District. This decision is based not only upon justice and equity but upon section 9 of Act No. 2832, which states that the Metropolitan Water District shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution.

(Sgd.) "LEONARD WOOD
"Governor-General"

A. GIDEON
Manager, Metropolitan Water District

Exhibit C

Copy of the correspondence relative to the appeal of the minority members of the Metropolitan Water District Board against the resolution of said Body exempting the City of

Manila from payment of fire hydrant rentals and maintenance charges of public hydrants.

AUGUST 12, 1924

The Honorable, the SECRETARY OF THE INTERIOR
(Thru the Metropolitan Water District Board)
Manila.

SIR: In pursuance of the provisions of section 2 of Act No. 3109, which amended section 4 of Act No. 2832, the undersigned members of the Metropolitan Water District Board hereby appeal from the resolution of a majority of the Board of Directors passed on August 11, 1924, to the effect that the said Board petition the Philippine Legislature to amend section 9 of Act No. 2832 so as to exempt the City of Manila from the payment for services rendered to it in connection with the maintenance and operation of public hydrants and fire hydrants.

Section 9 of Act No. 2832 reads as follows: "The Metropolitan Water District shall own and control all the sewer and water distributing systems of the City of Manila and of the municipalities comprising the District and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution."

The Board on January 28, 1924, passed a resolution to the effect that the City of Manila was under no legal duty to pay any revenue for fire and public hydrants installed in said city and cancelled resolutions previously adopted concerning rentals for said fire and public hydrants. From that resolution the undersigned appealed to you in accordance with the law, which appeal we understand was sustained on the ground that under the provision of section 9, Act No. 2832, the City of Manila could not legally be exempted from such tax.

The present action of the majority members of the Board constitutes another attempt to secure exemption previously claimed.

While we recognize that the officials of the City of Manila may quite properly petition the Legislature regarding such legislation as they may consider to be for their best interests, nevertheless we do not consider the action now taken proper

when taken by the majority as members of the Board of Directors of the Metropolitan Water District.

The Metropolitan Water District is at present earning a surplus over and above operating expenses and interest and sinking fund charges on the bonds at present outstanding of approximately ₱170,000 per annum. No provision is, however, made in the accounts of the District for depreciation. The present water supply system of the District has now been installed for nearly twenty years and the time is rapidly approaching when the cost of replacements and repairs thru depreciation will tend considerably to increase. The building up of a surplus is therefore essential if the service rendered by the District is to be maintained and the supply system kept in proper repair.

If the City of Manila is exempted from the charges as proposed, the loss of revenue to the District will be approximately ₱170,000 per annum, thus resulting in no surplus for the District.

Our appeal is also based on the fact that such action would constitute a discrimination in favor of the City of Manila and is against the other municipalities served by the District, as under the law it would still be necessary to charge such municipalites for similar services.

Our appeal is also based on the fact that efforts are now being made to secure the necessary funds for the purpose of increasing the water supply of the District, which increase is absolutely essential for the rendering of proper service to the District and to supply the ever increasing needs for water. The extension to the system will add approximately one million pesos per annum to the expenses of the District for interest and sinking fund charges and additional operating expenses. While the consumption of water is increasing, thus increasing the income of the District, nevertheless the increase will not be at a rate sufficient to meet from current income the increased charges, so that the surplus which has been accumulated during the past few years of operation will, according to the best possible estimates, be entirely depleted and a small deficit may even result in the years 1934 and 1935, after which time the District again should be self-sustaining.

If, therefore, the District is deprived of income from the City of Manila amounting to approximately ₱170,000 per

annum, it will not be possible for the District from its present resources to meet the additional charges which will be incurred in the extension of the system.

The only alternative will be an increase in rates to private consumers and this at a time when a larger supply of water will make necessary a campaign for the increasing of private installations among the poorer people of the District, who naturally would be very greatly benefited thereby. The increased use of a supply of potable water by the poorer people would greatly improve health conditions in the District.

The City of Manila is now being charged for services actually rendered to it by the District, and which services the city, and not the District, is under obligations to render to its inhabitants.

We, therefore, submit our appeal from the decision of the majority of the Board, on the grounds above stated.

(Sgd.) A. D. WILLIAMS
H. B. POND
Members, Metropolitan Water District Board

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
METROPOLITAN WATER DISTRICT
MANILA, P. I.

1st Indorsement

AUGUST 14, 1924

Respectfully forwarded to the Honorable, the Secretary of the Interior, inviting attention to the attached appeal from the resolution approved by the Majority of the Metropolitan Water District Board at the meeting held on the 11th instant (5.13 to 6.10 p. m.), requesting that the Organic Act (No. 2832) of the Metropolitan Water District be amended so that the City of Manila may be relieved from the payment for services rendered by the Metropolitan Water District in connection with the operation and maintenance of public and fire hydrants.

Certified copy of the resolution in question is herewith enclosed.

As yesterday was a holiday, these papers could not be forwarded earlier.

By direction of the District Board:

(Sgd.) JOSE F. RAMOS
Secretary-Treasurer

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
METROPOLITAN WATER DISTRICT
MANILA, P. I.

Extracts from the records of the Metropolitan Water District:

At a regular meeting of the Metropolitan Water District Board held at the Mayor's Office, City Hall, Manila, P. I., on the 11th day of August, 1924, at 5 p. m., in accordance with the By-laws, a *quorum* being present, the City Treasurer moved and Mr. Garrido, Acting City Engineer, seconded, to adopt the following

"RESOLUTION

"WHEREAS it is the sense of the District Board that the City of Manila should not be required to pay to the Metropolitan Water District for public services which were formerly rendered by the city free of charge;

"WHEREAS, due to its present financial condition, the City of Manila is apparently unable to meet all its obligations to the Metropolitan Water District; Now, therefore, be it

"*Resolved*, That the Honorable, the Secretary of the Interior be, and hereby is, requested to recommend to the Legislature the amendment of the Organic Act of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants."

Messrs. Pond and Williams objected to the approval of this resolution, stating among other things that it would be a very poor policy (1) to establish a discrimination in favor of the City of Manila and against the other municipalities of the District, (2) to encourage the waste of water, and (3) to make the consumers of the District pay for services which constitute a legitimate charge against the city. After dis-

cussion the motion was put to a vote with the following result: Messrs. Garrido, Alfonso, Montenegro, and the President voted 'Aye,' while Messrs. Bond and Williams voted 'Nay.' The resolution having been declared approved, Mr. Pond forthwith expressed the intention of the minority to appeal therefrom to the proper authorities in accordance with the provisions of existing laws, and the Secretary was ordered to forward such appeal with all pertinent papers. * * *"

I, Jose F. Ramos, Secretary-Treasurer of the Metropolitan Water District, hereby certify that the foregoing extracts are true copies from the minutes of the said meeting of the Metropolitan Water District Board.

(Sgd.) JOSE F. RAMOS
"Secretary-Treasurer

DEPARTMENT OF THE INTERIOR
MANILA
2nd Indorsement
AUGUST 15, 1924

Respectfully forwarded to His Excellency, the Governor-General, reiterating our recommendation submitted on May 16, 1924, to His Excellency, on the same matter treated in the within appeal of the minority members of the Metropolitan Water District Board quoted hereunder:

"SETTLEMENT OF THE LONG STANDING CONTROVERSY BETWEEN THE CITY OF MANILA AND THE METROPOLITAN WATER DISTRICT WITH REGARD TO THE PAYMENT OF WATER CONSUMED THRU THE PUBLIC HYDRANTS.

"Attention in this connection is respectfully invited to previous correspondence forwarded to that office by our sixth indorsement dated March 22, 1924, relative to this matter, specially to the recommendation of the Attorney-General that this controversy be submitted to the Philippine Legislature for final settlement inasmuch as a question of policy is involved. The history of this controversy as well as the reasons of the City of Manila in refusing to pay for water consumed thru the public hydrants and those of the Metropolitan Water District in insisting in its claim for payment, are all well explained in said correspondence and need not be repeated here. We simply want to make it clear that in view of the

poor finances of the City of Manila which render it incapable to undertake needed public improvements; of the considerable amount that the City of Manila will have to pay for water consumed in its public hydrants for street sprinkling, for extinction of fire, and other purposes; of the discontinuance of the Insular aid given by the Insular Government to the city, both of which factors reduce the capacity of the City of Manila to undertake important public improvements, specially the construction of school buildings; and in view of the fact that the city made large investments when the system was yet under its management, it seems to this Department that, on equitable grounds, the City of Manila should be exempted from paying for water consumed thru the public hydrants, at least, until its revenue collections improve, or, say, until after a period of five years."

(Sgd.) FELIPE AGONCILLO
Secretary of the Interior

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

3rd Indorsement

MANILA, *September 18, 1924*

Respectfully returned to the Honorable, the Secretary of the Interior, Manila, hereby sustaining, under the provisions of Act No. 3109, section 4, the within appeal of the minority of the Board of Directors of the Metropolitan Water District. It is hereby decided that the City of Manila shall pay for all services rendered by the Metropolitan Water District. This decision is based not only upon justice and equity but upon section 9 of Act No. 2832, which states that the Metropolitan Water District shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution.

(Sgd.) LEONARD WOOD
Governor-General

Certified copies:

J. C. CARPIO
Acting Chief Clerk, Metropolitan Water District

MANILA, P. I., *September , 1925*

Exhibit D

Excerpts from the minutes of the regular meeting No. 9 of the District Board, Metropolitan Water District, held on November 17, 1924.

PRESENT

Mayor (Hon. M. Romualdez), City of Manila.
President of the Municipal Board (Hon. Alejandro M. Panis), City of Manila.
Director of Public Works (Mr. A. D. Williams).
City Treasurer (Mr. Victor Alfonso).
Mr. Horace B. Pond.

ABSENT

Provincial Governor of Rizal.
City Engineer.

* * * * * * *

On motion of Mr. Pond, seconded by the City Treasurer, the District Board unanimously approved the following

"RESOLUTION NO. 21

"A resolution to enact regulations for the sanitary protection of the watershed and the reservoirs and water mains, and for the proper operation and protection of the Metropolitan Water Supply and Sanitary Sewer Systems."

* * * * * * *

"RESOLUTION NO. 21 (*a*)

"A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District."

* * * * * * *

I hereby certify to the correctness of the foregoing quotations from the minutes of the Metropolitan Water District Board.

JOSE F. RAMOS
Secretary-Treasurer

By A. GIDEON
Manager

On October 6, 1925, the petitioner by its attorney filed with the Supreme Court the following demurrer to the answer:

[CAPTION AND TITLE OMITTED]

DEMURRER TO THE ANSWFR

Comes now the petitioner in the above-entitled case, by its undersigned City Fiscal, and demurs to the answer of the respondents upon the following grounds:

1. That the answer does not state facts sufficient to constitute a defense; and

2. That the answer is ambiguous, unintelligible, and uncertain.

ARGUMENTS

The basic contention of the petitioner is this: A demurrer lies against the respondents for refusing to release certain funds belonging to the City of Manila as its share in the internal-revenue collections and to pay them to said city, and for attempting to dispose of said funds in favor of the Metropolitan Water District.

The answer dodges this fundamental question raised by the petition, and sets up a special defense by alleging facts which either are foreign to the true issue or rather go in support of the petition, and which do not constitute a defense or justification of the conduct of the respondents. Let us examine one by one the thirteen allegations of the special defense.

1. The first allegation is that when the city water and sewerage systems was under the administration of the City Engineering and Public Works Department, the other departments of the city used to pay for water and water services rendered by said department.

This allegation only shows that the petitioner paid to itself its water and water services. Since the money with which said city departments paid their water consumption and other water services to another city department was in fact city money, there was in reality but a transfer of funds from said city departments to that of the city engineer. This being so, if the city preferred that each of its departments should defray its own water expense, this act of the city in connec-

tion with its own property, the water system, is no reason at all for requiring it to follow the same policy now that the control and administration of its water and sewer systems have been transferred to the Metropolitan Water District, an extraneous corporation which is entirely disconnected with the city government and pretends to have the ownership of said systems. (See the cases cited in our printed Memorandum, pp. 56, 57.)

Anyhow, the payment made by the city to itself of its water bills has nothing to do with the retention and attempted illegal disposal in favor of said District of city funds in the possession of the Internal Revenue Bureau, which are the acts complained of in the petition.

2. The second allegation in the special defense is that the Metropolitan Water District has been furnishing water and rendering water service to the petitioner.

This is a fact expressly admitted in the petition, but is no ground for the action taken by the respondents in refusing to pay to the city its lawful share of the internal-revenue collections and attempting to pay it to said District.

3. The third allegation is that the city has been voluntarily paying to said District "for *some* of the water and water services above-mentioned," as shown by Exhibit A attached to the answer.

If the city paid *some only* of said water and water services, then the inference is that either the District exempted the city from the payment of *other* water services, or the city refused to pay all of them. If the former, the fact that the District exempted the city from *other* water services shows that the District acknowledged that the collection of water charges from the city was illegal, and that it is under the obligation of reimbursing those already collected, by virtue of the provisions of article 1895 of the Civil Code, inasmuch as nobody is to be enriched at the expense of another. If the city refused to pay for *all* water and water services rendered to it by the District, then the fact that it paid for *some* of them only but shows that such partial payment was error on the part of the city. In order to show that the city recognized that it was not exempt from the payment of water and water services, it should be alleged that the city has paid absolutely

and indiscriminately for *all and every one* of the water bills presented by the District before the commencement of this action.

By the way, it will be noted that, while in paragraph 2 of the special defense respondents allege that the District has been furnishing water and rendering water services to the city since its organization in 1919, there is no allegation to the effect that the water consumption of the city from 1919 to 1921 was ever paid by the same. (Exhibit A only covers the period from 1922 to September, 1924.) The silence of the respondents in that respect demonstrates that either the District has never sent any water bill to the city covering the services rendered during those three years (1919–1921), thus owning the illegality of charging the city for said services, or if collection was ever attempted for the services during said period, payment was refused, and the District made no further efforts toward such collection.

At any rate, the payment by the city of the amounts shown in Exhibit A was not an authority for the respondents Collector of Internal Revenue and Insular Auditor to draw the aforesaid warrants for the city's allotment of the internal revenue payable to the Metropolitan Water District, instead of said city, which is the only person entitled thereto as of right.

4. Respondents allege in the fourth paragraph of their special defense that the Board of Directors of the District passed a resolution exempting the city from fees for the use of the public and fire hydrants installed therein, but that the Governor-General reversed said resolution.

If any conclusion can be drawn from this allegation it is that the very governing body of the District considered the claim of exemption of the city from water charges to be a just and reasonable one. Now, if the Governor-General opposed said resolution, that only shows that he entertained a different view from that of the District Board.

Anyhow, said opposition of the Governor-General does not affect the present claim of the petitioner, nor was obviously any justification for the respondents to attempt to pay the aforesaid funds belonging to the city to the Metropolitan Water District.

5. The fifth paragraph of the special defense recites that the same District Board passed another resolution requesting the Secretary of the Interior to recommend that Act No. 2832 be amended by the Legislature so as to relieve the city from the payment of fire and public hydrants rentals and other charges, but that the Governor-General likewise disapproved this resolution.

This fact only shows an earnest desire on the part of the said District Board to yield to the claim of the city. The disapproval of the resolution in question by the Governor-General does not, however, show that the respondents acted lawfully in depriving the city of its rightful share of the internal revenue and in attempting to pay it to the District for it is not a negative act of the Chief Executive but the law itself that would justify such an action of the respondents, and there is no such law.

6. The sixth defense is that the Board of Directors of the District has of late approved a resolution fixing the charges and rates for all services rendered by the District.

The city has, however, nothing to do with the acts and resolutions of said Board. Nor does the last-mentioned resolution constitute an authority for the respondents to dispose of city funds in favor of the Metropolitan Water District.

7. The seventh ground of respondents' special defense is that the District has been sending bills to the city for the collection of water and water services, but that the city paid some of said bills and refused to pay the others.

This allegation is ambiguous, unintelligible, and uncertain. It may mean that, of the bills sent to the city at any one time, some were paid and the others not, or that bills were sent at different times and some of them were paid and others not, or that having refused to pay some of said bills, the city afterwards decided to pay those subsequently sent.

Be it as it may, the fact remains that not all of the bills sent were paid. This only evinces the determination of the city to contest the legality of the collection of said bills. Had the city consistently paid all of said bills before the institution of these proceedings, there would be an inconsistency in its conduct, but since, as the answer says, some only of the bills were paid, the subsequent non-payment of the other bills

only evidences the acknowledgment of an error by the city. Be it what it may, it is an undeniable proposition that from two contrary acts by the same person no legitimate inference can be deduced except the contrariness of incongruity of such acts. Conceding that the city acted in the case incongruously, it by no means follows that it is prevented now to deny its liability and to contest the legality of the action of the respondents in attempting to dispose of the city's internal-revenue allotments in favor of the District.

8. The eighth allegation of the special defense is that, in view of the city's refusal to pay the aforesaid bills, the Metropolitan Water District requested the respondent Auditor "to enforce the settlement and adjustment of said outstanding accounts under the provisions of section 568 of the Administrative Code, as amended by Act No. 3066."

This allegation is ambiguous and uncertain. It assumes the existence of a settlement, of which there is no mention in the preceding paragraphs. It does not appear therefrom by whom the alleged settlement was effected. Paragraph 10 of the special defense conveys the idea that no such settlement was made before the District had required its enforcement by the Auditor, and that it was the Auditor who required the city to make said settlement. Said paragraph 10 says: "That the Insular Auditor then made demand on the City of Manila for the payment and *settlement* of said claim, etc."

The allegation in question also assumes the existence of "outstanding accounts" between the city and the District. But the whole answer only refers to an alleged indebtedness of the city. An indebtedness is one thing, and an account, a quite different thing involving debt and credit. (See the recent case of Ynchausti & Co. *vs.* Wright, G. R. No. 23601.)

Anyhow, section 588 of the Administrative Code does not authorize the respondents to take funds belonging to the city and transfer them to the District, as it was their admitted intention. The power to enforce a settlement of accounts cannot be taken as an authority for the Auditor to contravene the express provisions of the law in regard to the disposal of internal-revenue allotments. And, as we have already shown in our printed Memorandum, pp. 14, 15, the provisions of

section 588 above-mentioned are not applicable to the Metropolitan Water District.

9. The ninth allegation is to the effect that the Auditor reached the conclusion that the District's claim was just, legal, and proper. Nowhere, however, in the Jones Law, the Administrative Code, or any other statute is there any provision conferring upon the Auditor the power to dispose of internal-revenue allotments in favor of a person other than the one entitled thereto.

10. In the tenth paragraph of the special defense respondents allege that the respondent Auditor made demand on the city for the payment of the District's claim, "advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand."

This demand being illegal, in the opinion of the city, it was justified in refusing to comply therewith. The question became then one requiring judicial intervention, according to the decision in the case of Compañía General de Tabacos *versus* French *et al.* (39 Phil., 34) and the only legal way open to the respondent Auditor was that pointed out by section 650 of the Administrative Code which provides:

"The Insular Auditor shall, through the proper channels, supervise and procure the collection and enforcement of all debts and claims, and the restitution of all funds and property, found to be due the Government in his settlement and adjustment of accounts; and if any legal proceeding is necessary to such end, he shall request the Governor-General to authorize and direct the institution of the same."

But instead of availing himself of the legal means afforded by the above section, the Auditor attempted to order the payment of the city's share in the internal-revenue collections in favor of the Metropolitan Water District.

11. The eleventh paragraph of the special defense contains an admission of the illegality of the action committed by the respondent Auditor in instructing the Collector of Internal Revenue that all warrants covering the internal-revenue collections alloted to the city be drawn in favor of the District.

This action was a clear contravention of the provisions of sections 490, 491, 492, 494, 495, and 497 of the Administrative Code. Section 617 of this code prescribes further that—

"Warrants chargeable to *revenue* or trust funds of the Insular Government shall be drawn payable either directly to the *creditor to whom the money is due* or to a disbursing officer for official disbursement, etc."

The city is the person to whom the internal-revenue allotments in question were due, and the instructions given by the respondent Auditor to the respondent Collector of Internal Revenue that all warrants for said allotments be drawn payable to the District were a manifest infringement of said section 617.

12. The twelfth allegation is that, by virtue of an arrangement between the respondents "for the purpose of putting the present question to a test," the Collector of Internal Revenue issued certain warrants in favor of the city, and the Auditor refused to countersign the same.

Whatever the purpose of the respondents might have been, the above-described act was an illegal one. There being no question as to the applicability of the provisions of the Administrative Code contained in its chapter 19, article II, to the city, nor as to the fact that the amounts in the hands of the respondent Collector written on said warrants were the exact amounts allotable to the city, the countersignature of the same became a ministerial duty of the Auditor, as has been recently decided by this Honorable Court in the Ynchausti case.

13. The last paragraph of the special defense is also an admission of the illegality of the action which would have been carried out by the respondents, had they been not enjoined from doing so by this Honorable Court. The only person entitled to the internal-revenue allotments in question was the city, and respondents were rightly and opportunely prevented by this court from doing otherwise.

In short, the answer of the respondents refers to acts of the city, the District, the District Board, the Governor-General, and the respondents themselves which by no means justify the action taken and attempted to be taken by the said respondents. Whatever might have been the conduct of the entities and persons above-mentioned, the respondents acted

illegally in preventing the city from collecting the moneys due the same which are in the hands of the respondent Collector whose Bureau is not identified with the District, the latter having not, on the other hand, any real account with the petitioner. The answer does not, therefore, state facts sufficient to constitute a defense, and those stated are in some respects in an ambiguous, unintelligible, and uncertain form.

It is, therefore, respectfully prayed that this demurrer be sustained and a mandamus issued against them as prayed for in the petition with the costs.

Manila, P. I., October 6, 1925.

Respectfully submitted,

GUILLERMO B. GUEVARA
City Fiscal, Attorney for the Petitioner

Received copy this 6th day of October, 1925.

DELFIN JARANILLA
Attorney-General

After hearing argument on the above demurrer, the Supreme Court on November 25, 1925, promulgated the following decision:

[CAPTION AND TITLE OMITTED]

IN BANC

[G. R. No. 23551. Submitted October 20, 1925. Promulgated November 25, 1925]

THE CITY OF MANILA, Petitioner

VERSUS

JUAN POSADAS, JR., as Collector of Internal Revenue, BEN F. WRIGHT, as Insular Auditor, and the METROPOLITAN WATER DISTRICT, Respondents

Justices present:

AVANCEÑA, *C. J.*, STREET, MALCOLM, VILLAMOR, OSTRAND, JOHNS, and ROMUALDEZ, *JJ.*

STATEMENT

This is an original petition for mandamus, in which it is alleged:

"I

"That the petitioner is a municipal corporation organized under the provisions of chapter 60, title X, of Act No. 2711

of the Philippine Legislature, known as the Administrative Code, and is empowered to sue and be sued.

"II

"That the respondent Juan Posadas, Jr., is, and during the period of time mentioned in this petition was, the Collector of Internal Revenue of the Government of the Philippine Islands; the respondents Ben F. Wright and Vicente Carmona are, and during the same period were, the Insular Auditor and Insular Treasurer, respectively, of the Philippine Islands, and the respondent Metropolitan Water District is a public corporation created by Act No. 2832, with powers to sue and be sued.

"III

"That the petitioner is entitled to a part and portion, determined by law, of the internal revenue collected by the respondent, the Collector of Internal Revenue (see section 488, Administrative Code), as well as to a certain per cent of the one and one-half per cent tax imposed on merchants, manufacturers and commission merchants (see section 3, Act No. 3065), and that petitioner's share of said internal revenue and one and one-half per cent tax does not constitute a credit or debt owing by, and due from, the Insular Government to the petitioner, but is a property of the petitioner, belonging and appertaining to it both as a province and as a municipality of the Philippine Islands (see section 495, par. 2, Adm. Code), used and to be used by the petitioner for the purpose of defraying the expenses necessary for its existence and operation.

"IV

"That the respondent, the Collector of Internal Revenue, in compliance with his ministerial duty imposed upon him by section 497 of the Administrative Code to pay quarterly to the petitioner, the allotments of said internal revenue and percentage tax belonging to it, has been in the past drawing warrants for said allotments payable to the petitioner; but that from and after the month of January, 1922, the said respondent has ceased to make such payments to the petitioner, and has drawn warrants for such internal revenue and

percentage tax allotments belonging to the petitioner, payable to the Metropolitan Water District, a water corporation created by Act No. 2832 of the Philippine Legislature.

"V

"That the petitioner is informed, and, therefore, alleges, that the transfer and payment of said allotments of the internal revenue and percentage tax, belonging to the petitioner, to the said Metropolitan Water District has been made by the respondent Collector of Internal Revenue by and under certain instruction of the respondent Insular Auditor, dated January 5, 1922, a certified copy of which is attached hereto and made a part hereof, marked as Exhibit A.

"VI

"That the petitioner is also informed, and, therefore, alleges, that the respondent Insular Auditor has instructed his co-respondent Collector of Internal Revenue to pay the said allotments of internal revenue and percentage tax aforementioned, belonging to the petitioner, to the said Metropolitan Water District, instead of the petitioner, for the purpose of setting off certain alleged debts of the petitioner for alleged water services rendered it by the said Metropolitan Water District."

It is then alleged that, upon receipt of such information, the city notified the Collector of Internal Revenue that such proceedings were illegal and void, and that in the future payments should be made to the City of Manila, in accordance with the provisions of section 497 of the Administrative Code.

"VIII

"That in spite of the letter or communication sent by the petitioner, through its attorney, to the respondent Collector of Internal Revenue, the latter, following instructions of the other respondent, Insular Auditor, informed the petitioner by a communication bearing date of January 5, 1925, which is hereto attached and made a part hereof as Exhibit C, that he would continue making payments of the share belonging to the petitioner of the internal revenue and of the especial tax imposed by Act No. 3065, including that corresponding

to the last quarter of the year 1924, in favor of the respondent Metropolitan Water District, and the petitioner believes, and, therefore, alleges that said respondent Collector of Internal Revenue will carry out such threats unless timely prevented from so doing by this Honorable Court.

"IX

"That there does not exist between the Metropolitan Water District, which is neither a governmental entity, nor office, nor branch of the Insular Government (see section 1, Act No. 2832), and the petitioner City of Manila, any account the settlement of which the respondent Insular Auditor could legally authorize and enforce.

"X

"That the petitioner does not owe anything to the Metropolitan Water District by way of alleged water service rendered by said District to said petitioner; and that the latter has up to the present time been questioning the power of said District to render and collect any bill for water supplied to the petitioner.

"XI

"That Act No. 2832 does not empower the Metropolitan Water District, either expressly or impliedly or in general terms, to charge for water consumed by the petitioner, from the water system of the City of Manila.

"XIX

"That the said Act No. 2832 did not have more object, and in fact, did not do more than to transfer, from the petitioner to the Metropolitan Water District, the possession, administration, control and management of the sewer and water supply systems of the City of Manila, and, to this effect, has provided, in its section 8 that the said District receive and assume all assets and liabilities together with the bonds sinking funds of said systems, the same as if it were a mere receiver or judicial depositary.

"XXI

"That as one of the liabilities of the water supply system of the City of Manila, and among the charges, obligations

and responsibilities going with said system which constitutes a part of said liabilties, is that of furnishing water free of charge to the petitioner, in its aforesaid capacities as owner and fiduciary, for all its uses and needs.

"XXV

"That even supposing that the respondent Insular Auditor is empowered to settle accounts outstanding between the petitioner and the Metropolitan Water District, the said petitioner has up to the present time contested the bills of the latter for alleged water services rendered the petitioner for the reason that the same are not authorized by law, and that said Insular Auditor is not authorized to settle or adjust accounts which, not being based upon any provision of law, are only made so by an erroneous interpretation of the law by said Auditor, by disposing in favor of said District of funds clearly belonging to the petitioner, such as its share in the collections obtained by the enforcement of the internal-revenue laws and of Act No. 3065.

"XXVI

"That it is a ministerial duty on the part of the respondent Collector of Internal Revenue to make in favor of the petitioner quarterly allotments of the share of internal revenue collected by him, corresponding to said petitioner, and of its portion of the tax imposed by Act No. 3065 (sec. 497, Adm. Code).

"XXVII

"That there is no law authorizing the respondent Insular Auditor to prevent his co-respondent Collector of Internal Revenue from complying with his ministerial duty referred to in the next preceding paragraph hereof, or to give the latter instructions to the effect that the above-mentioned allotments which, by clear and express provision of law, ought to be made in favor of the petitioner, should be made and paid in the name and in favor of the Metropolitan Water District; nor is said respondent Insular Auditor also authorized by any law to constitute himself a judge and arbiter of disputes regarding the interpretation of laws arising between a municipal corporation and a public corporation which

does not belong to the Insular Government or any executive branch of the Government of the Philippine Islands.

"XXX

"That the respondent Ben F. Wright, Insular Auditor, is without authority of law to issue a warrant by himself, much less a warrant covering amounts payable and chargeable against the apportionment of the City of Manila in the internal-revenue collections and special assessment imposed by Act No. 3065.

"XXXI

"That the respondent Vicente Carmona, Insular Treasurer, is likewise without any authority of law to honor, cash, or otherwise pay out of the funds belonging to the petitioner as aforesaid, any check, warrant, or order of payment issued by the respondent Ben F. Wright, Insular Auditor, or by any other officer, except only after judicial determination of the present controversy.

"XXXII

"That to permit such an open violation of the law by the herein respondents, the aforesaid warrants corresponding to the allotments of funds of internal revenue partaining to the petitioner, collected during the last quarter of 1924, as well as those which may thereafter be collected and may be payable to said petitioner, would be issued and made payable to the Metropolitan Water District, in violation of the law, and to the serious detriment of the petitioner's interests in particular and of the public interests in general.

"XXXIII

"That as a result of the acts of the respondents above related, the petitioner has suffered and will suffer irreparable damages and has encountered and will encounter serious and considerable embarrassments and obstacles in the discharge of its corporate and governmental functions, unless said respondents are immediately restrained and enjoined from such acts by this Honorable Tribunal."

The Metropolitan Water District is made a party defendant, for the reason that it claims to have interests which are adverse to those of the petitioner.

It is then alleged that the city does not have any plain, speedy, or adequate remedy in the ordinary course of law.

Under our view of the case, the foregoing allegations are the only ones which are material to this opinion. The complaint, which is quite voluminous, also purports to give a history of the water system of the City of Manila, and alleges in substance that any title to such water system which the Metropolitan Water District may have is held by it in trust and for the use and benefit of the city.

To this petition, a demurrer was filed by the defendants upon the ground that it did not state facts sufficient to constitute a cause of action.

After arguments were heard, and the respective briefs of opposing counsel were submitted, the demurrer of the defendants was overruled, and an answer was filed, in which they deny all of the material allegations of the petition, and as a special defense allege:

"1. That when the water and sewerage system referred to in the petition was under the administration of the Sewer and Waterworks Division of the Engineering and Public Works Department of the City of Manila, the other departments of the city paid for water and other services furnished to them by said Division;

"2. That the Metropolitan Water District, since its organization in the year 1919 up to the present, has been furnishing water and rendering water services to the Government of the City of Manila;

"3. That the Government of the City of Manila has been voluntarily paying to the Metropolitan Water District for some of the water and water services above-mentioned in the amounts, for the purposes, and for the period specified in the statement marked Exhibit A attached to this answer and made a part thereof;

"4. That on January 28, 1924, a supposed majority of the Board of Directors of the Metropolitan Water District passed a resolution exempting the Government of the City of Manila from fees for the water consumed by the fire and public hydrants installed in said city; but upon appeal duly taken by the minority of said Board to the Governor-General, through the Secretary of the Interior, under the provisions of section

4 of Act No. 2832, as amended by section 2 of Act No. 3109, the Governor-General in an indorsement dated September 18, 1924, reversed the above resolution of the alleged majority of the Board and decided 'that the City of Manila shall pay for all services rendered by the Metropolitan Water District.' A copy of the correspondence in regard to the above resolution, appeal, and decision, marked Exhibit B is hereto attached and made a part hereof;

"5. That on August 11, 1924, a majority of the Board of Directors of the Metropolitan Water District approved a resolution to the effect that the Secretary of the Interior be 'requested to recommend to the Legislature the amendment of the Organic Act of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants'; but the minority members of the Board duly appealed from this resolution to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, and the Governor-General rendered the same decision mentioned in the next preceding paragraph. A copy of the correspondence referring to this matter, marked Exhibit C, is hereto attached and made a part hereof;"

It is then alleged that on November 17, 1924, the Board of Directors of the Metropolitan Water District unanimously approved Resolution No. 21, entitled "A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District," in and by which all consumers of water were to be charged uniform rates.

"7. That the Metropolitan Water District has been sending bills to the Government of the City of Manila for the collection of the value of the water and water services which it had been furnishing to said city; but while said Government has been paying some of those bills it has refused to pay others;

"8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the Government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding

accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066;

"9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper;

"10. That the Insular Auditor then made demand on the City of Manila for the payment and settlement of said claim, advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand;

"11. That thereupon the Insular Auditor instructed the Collector of Internal Revenue that thereafter and until further notice, all warrants covering the internal-revenue collections allotted to the City of Manila be drawn by said Collector in favor of the Metropolitan Water District instead of said city as theretofore;

"12. That by virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue for the purpose of putting the present question to a test, the latter officer issued warrant No. 636, dated December 9, 1924, for the sum of ₱21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of ₱3,856.04, both covering the internal-revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue;

"13. That on January 5, 1925, the Collector of Internal Revenue, in answer to a communication from the City Fiscal, advised the latter that pursuant to subsequent instructions from the Insular Auditor, he would, within ten days from said date, proceed to issue the warrants for the above-mentioned sums, in favor of the Metropolitan Water District, but due to the preliminary injunction issued in the present case the Collector of Internal Revenue was prevented from doing so."

To this answer, the petitioner filed a demurrer upon the ground, first, that the answer does not state facts sufficient to constitute a defense, and, second, that the answer is ambiguous, unintelligible, and uncertain.

Hence, the only question now before this court is whether or not the facts alleged in the special defense constitute a defense to plaintiff's cause of action.

JOHNS, *J.*:

Section 2427 of the Administrative Code says:

"This chapter shall be known as the Charter of the City of Manila."

Section 2428 provides:

"The City of Manila constitutes a political body corporate and as such is endowed with the attribute of perpetual succession and possessed of the powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this charter."

Section 2429 provides:

"The city may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey, and dispose of real and personal property for the general interests of the city, condemn private property for public use, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and exercise all the powers hereinafter conferred."

Section 2434, as amended by Act No. 2774, provides:

"The Mayor shall be the chief executive of the city, and as such, shall have immediate control over the executive functions of the different departments, subject to the authority and supervision of the Secretary of the Interior.

"The Mayor shall be appointed by the Governor-General with the consent of the Senate, shall hold office for three years unless sooner removed . . ."

Section 2439 provides:

"The Municipal Board shall be the legislative body of the city, and shall consist of ten elective members who shall hold office for four years or until their successors are elected and

qualified. The members of the Board shall elect each year from among their number a president, who for one year shall preside at all meetings of the Board at which he is present. In his absence, the Board shall elect one of its members as temporary presiding officer. The president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the Board."

This was amended so as to make the terms of office of the members of the Board for a period of three years.

Section 2440 provides:

"The members of the Municipal Board shall be elected at large from the entire city, and each of them at the time of his election shall be a resident for at least one year, and a qualified elector, of his Assembly district, and not less than twenty-three years of age . . ."

Section 2442 provides:

"The Board shall make all appropriations for the expenses of the government of the city . . ."

Section 2444, as amended by Act No. 2774, specifies and defines the "General powers and duties of the Board," which are very broad and comprehensive, and covers all matters which are necessary and material to the administration of a government by the city.

Subsection (*u*) of that Section provides:

"For the laying out, construction, and improvement, and to regulate the use, of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places . . ."

and subsection (*x*) provides:

"For the maintenance of waterworks for the purpose of supplying water to the inhabitants of the city, and for the purification of the source of supply and the places through which the same passes, and to regulate the consumption and use of the water; to fix and provide for the collection of rents therefor; and to regulate the construction, repair, and use of hydrants, pumps, cisterns, and reservoirs."

Section 2465, as amended by Acts Nos. 3043 and 3169, provides:

"The law department shall consist of the fiscal of the city and of seven assistants, who shall discharge their duties under the general supervision of the Attorney-General. The fiscal of the city shall be the chief legal advisor of the city and all offices and departments thereof; shall represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party . . ."

Section 2468 provides:

"The Municipal Court shall have territorial jurisdiction embracing the entire police jurisdiction of the city . . ."

It will thus be seen that under the terms and provisions of its charter, the City of Manila has both executive, legislative, and judicial powers, and that all of such powers are vested and conferred by an Act of the Legislature of the Philippine Islands.

Section 3 of the Organic Act or what is known as the Jones Law says:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws . . .

"That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

Section 8 provides:

"That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

Section 490 of the Administrative Code says:

"*Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and

not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section."

Section 491 provides:

"*Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts alloted to said several purposes during any year shall not be greater than the amount alloted for the same purposes during the fiscal year nineteen hundred and nine."

Section 492 provides:

"*Apportionment and use of provincial allotment.*—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively."

Section 494 provides:

"*Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided."

Section 495 provides:

* * * * * * *

"The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Section 497 provides:

"*Warrants for quarterly payment of allotments.*—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

It appears from the answer of the defendants that under the terms and provisions of said section 497, the Collector of Internal Revenue:

"Issued warrant No. 636, dated December 9, 1924, for the sum of ₱21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of ₱3,856.04, both covering the internal-revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, assigned by him, to the Collector of Internal Revenue."

That is to say, such warrants represent the amount which the city should receive as its allotment from and out of the "internal revenues collected under the laws of the Philippine Islands," and that fact is admitted by defendants' answer. This money is to be paid to the city from and out of the public revenues of the Government, and it is public money, which has been assessed, levied, and collected by the Government for governmental purposes, and the law says that the City of Manila shall have and receive twenty per centum of such money as a municipal allotment, and it also says that it shall receive that money quarterly "upon warrants drawn by the Collector of Internal Revenue." When the money was assessed, levied, and collected, in so far as the City of Manila is concerned, it was assessed, levied, and collected for a specific purpose, and for such reason, it should "be treated as a special fund in the treasury and paid out for such purpose only." The money was public money in the Treasury of the Government, and it was there held in trust for the sole use and benefit of the city.

The Jones Law further provides:

"That no money shall be paid out of the Treasury except in pursuance of an appropriation by law." (Sec. 3.)

and in this instance, an appropriation could only be made by the Legislature of the Philippine Islands or the legislative body of the City of Manila.

There is no claim or pretense that any appropriation has ever been made out of the public funds to pay the claim of the Metropolitan Water District against the City of Manila,

and yet in legal effect the defendants seek to take money out of the Treasury of the Philippine Islands which belongs to the treasury of the City of Manila, and to pay the private debt which the Metropolitan Water District claims to have against the City of Manila. The City of Manila has no authority to pay any debt against it, "except in pursuance of an appropriation by law." Neither has any person any authority to take money out of the Treasury of the Government for any purpose, "except in pursuance of an appropriation by law," and there is no claim or pretense that any appropriation was ever made by the government or the City of Manila to pay the claim of the Metropolitan Water District against the City of Manila.

In the case of Reeside *versus* Walker, Secretary of the Treasury of the United States (52 U. S. Reports, 271), the Supreme Court of the United States says:

"Where the United States were the plaintiffs, and a verdict was rendered that they were indebted to the defendant, and an application was made for a mandamus to compel the Secretary of the Treasury to credit the defendant upon the books of the Treasury with the amount of the verdict, and to pay the same, the mandamus was properly refused by the Circuit Court. For a mandamus will only lie against a ministerial officer to do some ministerial act where the laws require him to do it and he improperly refused to do so.

"Besides, there was no appropriation made by law, and no officer of the Government can pay a debt due by the United States without an appropriation by Congress."

And on page 290, the opinion says:

"No officer, however high, not even the President, much less a Secretary of the Treasury or Treasurer, is empowered to pay debts of the United States generally, when presented to them. If, therefore, the petition in this case was allowed so far as to order the verdict against the United States to be entered on the books of the Treasury Department, the plaintiff would be as far from having a claim on the Secretary or Treasurer to pay it as now. The difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well-known constitutional provision, that no money

can be taken or drawn from the Treasury except under an appropriation by Congress. See Constitution, article 1, paragraph 9 (1 Stat. at L., 15).

"However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion."

As stated, the City of Manila is a municipal corporation with broad and general legislative powers given to it by the Legislature.

The Metropolitan Water District was also created by Act No. 2832 of the Legislature, and is entitled:

"An Act creating a public corporation denominated the Metropolitan Water District, prescribing its functions and activities, and for other purposes."

Section 2 provides:

"*Powers and general functions of the District.*—The powers, functions, and activities of the Metropolitan Water District of Manila shall be the following:

"(*a*) To have continuous succession under its corporate name until otherwise provided by law;

"(*b*) To prescribe its by-laws;

"(*c*) To adopt and use a seal and alter it at its pleasure;

"(*d*) To sue and be sued in any court;

"(*e*) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix and provide for the collections of rents therefor; etc."

Section 3 provides (as amended by Act No. 3109):

"*District Board; its members, reports to the Department of the Interior.*—Unless otherwise provided by law, all corporative powers of the Metropolitan Water District shall be exercised, its business managed, and its property kept and preserved, by a Board to be composed of the Mayor of the City of Manila, the President of the Municipal Board of the

City of Manila, the Governor of the Province of Rizal, the Director of Public Works or his representative, the Engineer of the City of Manila, the City Treasurer, and a taxpayer of the district, being a resident of the City of Manila, appointed by the Governor-General, with the consent of the Senate."

Section 8 provides:

"*Assets and liabilities of the Manila water and sewer system; their transfer to the District; sinking fund and Government guaranty.*—The District Board is hereby authorized and directed to receive and assume on behalf of the Metropolitan Water District all assets and liabilities pertaining to the sewerage and waterworks systems of the City of Manila, together with the sewerage and waterworks bonds sinking funds, and of all the indebtedness in general of the present sewer and water system of the City of Manila, and in turn to pledge such assets as security for the payment of the sewerage and waterworks bonded debt thus acquired."

Section 10 provides:

"*Powers reserved to the Legislature.*—This Act or any part thereof may be amended or repealed at any date by legislative authority, and the Metropolitan Water District may be reorganized or dissolved by legislative provision."

That is to say, the City of Manila is a municipal corporation, deriving all of its powers from the Legislature, and the Metropolitan Water District is a public corporation, as distinguished from a municipal corporation, and derives all of its powers from the Legislature. The City of Manila derives all of its revenues from public funds in the nature of fines, licenses and taxes assessed, levied and collected for its maintenance. The Metropolitan Water District derives all of its revenues from private sources and monies which it collects from consumers of its waters.

Under the facts alleged in the answer, the defendants undertook to take the money out of the Government Treasury which belongs to the city and use it to pay a disputed claim of a public corporation against the city over the vigorous protest of the city.

Assuming all of such facts to be true, the answer alleges as a defense:

"8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the Government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066."

Section 588 of the Administrative Code, as amended by Act No. 3066, provides:

"*Authority of auditor in adjustment of accounts between offices.*—The Insular Auditor shall have the power, subject to such regulations as may be prescribed therefor, to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

Act No. 3066 is entitled "An Act to amend certain sections of the Administrative Code, and for other purposes."

Section 584 of the Administrative Code, as amended by Act No. 3066, provides:

"*General jurisdiction of Bureau of Audits.*—The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. The said jurisdiction shall also extend to all corporations established and organized in accordance with the laws of the Philippine Islands wherein the Government of the said Islands or any of its branches owns the majority of the stock . . ."

Section 593, as amended by the same act, provides:

"Auditing districts; assignment and compensation of district auditors.—The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts . . ." These twenty-three districts are grouped into four divisions.

There is nothing in any of these provisions which would authorize or justify the Insular Auditor to compel a municipal corporation to pay a claim to a public corporation where the city disputes the claim.

The question involved between the city and the Metropolitan Water District is not one of an accounting. There is no pretense that the City of Manila has any claim of any kind against the Metropolitan Water District, and the only claim which the Metropolitan Water District has against the city is for the use of water, and the city disputes the validity of the claim.

Hence, the question involved between the city and the Metropolitan Water District is one of legal liability, and of legal liability only.

The answer further alleges as a defense:

"9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper."

That defense is based on the assumption that the Auditor has judicial powers, and yet there is no claim or pretense that any hearing was ever had or that any process was ever served on the city, or that it ever had any previous notice of the proceeding, or that it was given an opportunity to defend, and yet the record shows that the Auditor knew that the city denied any liability.

In defining what is "due process of law," Words and Phrases, Vol. 3, says:

Page 2227:

"The principle that no man shall be deprived of his liberty or property except by the 'law of the land,' or its synonym,

'due process of law,' is older than written constitutions—older even than Runnymede and breathes so palpably of exact justice that it needs no formulation in the organic law."

Page 2230:

"Due process of law is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the process be judicial or administrative or executive in its nature.

" 'Due process of law,' in its constitutional meaning, includes administrative process of the customary sort, as well as judicial process."

Page 2238:

"To give the clause of the Constitution which guaranties that 'no person shall be deprived of life, liberty, or property without due process of law,' therefore, any value, it must be understood to mean that no person shall be deprived by any form of legislation or governmental action of either life, liberty, or property, except as the consequence of some judicial proceeding, appropriately and legally conducted. It shows that a law which by its own inherent force extinguishes rights of property, or compels their extinction, without any legal process whatever, comes directly in conflict with the Constitution."

Page 2243:

" 'Due process of law' implies that whenever, in a judicial proceeding, a judgment is rendered by a court of justice affecting the liberty or condemning the property of another person, he is entitled to have reasonable notice of such procedure, trial, or contest."

In other words, "due process of law" is a fundamental, constitutional right given to every person, which it is the sworn duty of the courts to honor and protect.

Giving to Act No. 3066 its broadest possible construction, we are clearly of the opinion that, as between the City of Manila and the Metropolitan Water District, the Insular Auditor is not vested with judicial powers. By their respective charters, one is a public corporation, and the other is a municipal corporation.

The United States is under a Republican form of government in which all powers are vested in the executive, legislative, and judiciary, and their respective limits are clearly specified and defined, and as to the question here involved, those principles are embodied in and made a part of the Jones Law, known as the Organic Act of the Philippine Islands, and of section 17 of the Administrative Code.

The answer further alleges that on January 28, 1924, an alleged majority of the Board of Directors of the Metropolitan Water District passed a resolution, exempting the City of Manila from the payment of water consumed by fire and the public hydrants of the city. That an appeal was taken by the minority of the Board to the Governor-General, who reversed the action of the Board, and decided "that the City of Manila shall pay for all services rendered by the Metropolitan Water District."

It will be noted that the City of Manila was not a party to that proceeding, and that the only thing which the Board of Directors undertook to do was to exempt the city from the payment of water, and that the action of the Board was reversed by the Governor-General. That was the only question presented on the appeal.

It is further alleged that on August 11, 1924, a majority of the Board of Directors of the Water District passed a resolution that the Secretary of the Interior be requested to recommend to the Legislature to amend the Organic Act of the Water District, so as to relieve the City of Manila from such payment, and that upon appeal by the minority of the Board, this action of the Board also was reversed by the Governor-General. That is to say, the Board of Directors of the Metropolitan Water District passed a resolution to have the law amended so as to relieve the city from the payment of water, and the action of the Board was reversed by the Governor-General. No other question was presented to or considered by the Governor-General, and it is not claimed that the city was a party to that proceeding. The Governor-General did nothing more than to say that the Metropolitan Water District had a claim against the city for water which the city ought to pay, and that it ought not to be exempted from liability.

No one questions the power or authority of the Governor-General to make either one of those decisions. They were both executive acts. But the question as to whether money may be unlawfully taken out of the Government treasury, which belongs to the city, and given to and applied by a public corporation upon the payment of an alleged claim, which it has against the city, and upon which the city denies all liability, or as to whether the city is legally liable, or has a valid defense or counterclaim, is another and a very different question, and one upon which the city has a legal right to be heard and to defend itself.

In the final analysis, we have this situation. An attempt was made to take money out of the Government treasury, which belongs to the City of Manila, a municipal corporation, and apply it to the payment of a debt which a public corporation claims to have against the city. That proceeding was in direct conflict with three of the express provisions of section 3 of the Jones Law.

First, it violates that portion of the section which says that no law shall be enacted "which shall deprive any preson of life, liberty, or property without due process of law."

The answer does not claim or allege that the city was ever served with any process or that it had notice or was given an opportunity to defend itself before the Insular Auditor rendered his decision.

Second, it violates that portion of the section which says:

"That no money shall be paid out of the treasury except in pursuance of an appropriation by law."

It is not claimed that any appropriation was made by the Government or the city to pay the claim of the Metropolitan Water District against the city, and yet over the vigorous protest and objection of the city, defendants propose to take money out of the Government treasury, which belongs to the city, and pay an alleged debt of the Metropolitan Water District against the city. No money can be taken out of the Government treasury for any purpose without an appropriation having first been made for that specific purpose. In legal effect that was the decision of this court in Gotamco *versus* Wright, decided November 5, 1924, and published in volume

23 of the Official Gazette, page 1245, where in an opinion written by Justice Ostrand, it is said:

"Section 3 of the Organic Act expressly provides that 'no money shall be paid out of the Treasury except in pursuance of an appropriation by law.' Neither the Insular Collector of Customs nor any other official of the Government is authorized to order the expenditure of unappropriated funds."

And third, the other provision which says:

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

Here, the defendants propose to take public money from and out of the Government treasury, which is in a special fund, and which was assessed, levied, and collected for a special purpose, and pay it over to a public corporation. In other words, to take money out of the Government treasury, which was assessed, levied, and collected for the exclusive use and benefit of the City of Manila, a municipal corporation, and pay it to the Metropolitan Water District, which is a public corporation.

No authority has been cited, and none will ever be found to legalize such a proceeding.

In the recent decision of this Court in the case of Ynchausti *versus* Wright, it was held that the decisions of the Insular Auditor are final and conclusive only upon the "executive branches of the Government."

Accepting that as the law of this court, the defendants vigorously contend that the City of Manila is an executive branch of the Government. That position is not tenable. It is true that by the terms of the charter, the Mayor of the City of Manila is the executive officer of the city, and that the Mayor is appointed by the Governor-General. It is also true that by the terms of the charter, the Municipal Board is the legislative body of the city, which consists of ten members, who are elected by a direct vote of the people, and that it is the duty of the Board to elect a president from one of its own members, and that "the president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted

by the Board." That is to say, in the first instance, the power to allow or disallow a claim against the city, like the one in question, is vested in the Municipal Board, and it is elected by a direct vote of the people, and the charter of the City of Manila was granted by the Legislature of the Philippine Islands, and approved by the then Governor-General.

If, in the first instance, the power to allow or disallow a claim, like the one in question, was vested in the Mayor, there might be some merit in the contention, that it would then be an executive act. But that authority is vested in the council, and in such cases, the only power which the Mayor has is that of veto, and the council has the power to overrule his veto. Under the terms and provisions of the charter, the allowance or disallowance of a claim against the city, subject only to a veto, is vested exclusively in the legislative body of the city, which is elected by a direct vote of the people, and, outside of his power of veto, is a matter over which the Mayor has no control.

It must follow that under the provisions of the charter of the City of Manila, the allowance or disallowance by the municipal Board of a claim like the one in question is a legislative act, and that in the doing of such an act, the city would be exercising its legislative powers, and for such reason, and, if it is in any case, in that particular at least, the city is not an executive branch of the government.

The city claims and alleges that any title which the Metropolitan Water District may have in or to the water system is held by the Water District in trust and for the use and benefit of the city. That would be an equitable defense, and one upon which the city has the right to be heard and to have judicially determined.

This is a mandamus proceeding, and it is fundamental that title to property cannot be litigated in this kind of an action. It also appears that any claim which the Water District may have against the city is founded upon a contract express or implied for which mandamus will not lie.

Ruling Case Law, vol. 18, p. 129, says:

"43. *Contract rights.*—Obligations which rest solely upon contract will not be enforced by mandamus where there is no question of trust or of official duty; it is not the appro-

priate remedy for the enforcement of private contract rights."

On legal principle, the dicision of this court in the case of Rosario *versus* The Mayor of the City of Manila, is in point. Although the question there presented was "to enforce the performance of a private contract," the opinion written by Justice Street says that mandamus:

"Never lies where the party aggrieved has adequate remedy at law, and its aid is only to be invoked to prevent an absolute failure of justice in cases where ordinary legal processes furnish no relief."

And quotes with approval from the decision in State *ex rel.* Bohannon *versus* Howard County (39 Misso., 375), where the court says that it would not:

" 'Undertake by writ of mandamus to enforce simple common law rights between individuals, such as payment of money, or where there is another adequate legal remedy.' "

And the opinion of Justice Street says:

"The authorities, almost without exception, support the doctrine stated in the foregoing cases," citing a number of authorities.

It follows that the question as to whether or not the Metropolitan Water District has a valid claim against the City of Manila cannot be litigated in this kind of a proceeding, but assuming that its claim was valid, it would not be a defense to plaintiff's petition. The same thing is true as to the allegation in the petition, that the Metropolitan Water District holds the title to the water system in trust and for the use and benefit of the city. That question cannot be litigated in this action.

Hence, the only question now before this Court is as to whether the city has a legal right to have the warrants in question issued to and in its favor, and as to whether the acts of the Collector of Internal Revenue and the Insular Auditor, in seeking to pay over the money in question to the Metropolitan Water District are null and void.

Based upon the statutory provisions and the admitted facts, we are clearly of the opinion that the warrants in question

should be drawn to and in favor of the city, and that it is legally entitled to the possession of the funds, and that the decision of the Insular Auditor to divert the funds to the Metropolitan Water District is null and void and of no legal force and effect.

Under their respective charters, both the Metropolitan Water District and the city can sue and be sued. If the Metropolitan Water District has a valid claim against the city, that fact can legally be ascertained and determined in a judicial proceeding for that purpose, and in the same manner as any other disputed claim. If the Water District holds the title to the water system in trust and for the use and benefit of the city, that fact can also be determined in the same way, and the whole question settled. But neither of such questions can be judicially determined in a mandamus proceeding. Both of those questions will have to be determined in another and a different proceeding, upon proper pleadings, and decided upon the merits, and about which at this time and upon this record, we do not have or express any opinion.

Suffice it to say that the City of Manila is solvent and can be made to pay any debt that it legally owes, and that as to the title of the property, the city has ample redress against the Metropolitan Water District.

It will be noted that in the answer of the defendants:

"They deny, all and singular, the allegations contained in the other paragraphs of the petition, except those that in the following special defense are specifically admitted."

That is to say, the answer is in the nature of a general denial, except as to those questions which are alleged and admitted in the "special defense," which is in the nature of a plea of "confession and avoidance." In legal effect, the special defense admits the doing of the things of which the petitioner complains, and in justification alleges how and by whom they were done and the reasons why they were done.

The demurrer of the petitioner is upon the ground that the answer does not state facts sufficient to constitute a defense.

In its argument on the demurrer, the city says nothing whatever about the general denial in the answer, and con-

fines itself to the matters set forth and alleged in the special defense, from which it is very apparent that it was the purpose and intent of the city to limit its demurrer to the special defense alleged in the answer, and that it should be so construed.

Based upon the allegations made in the petition and those made in the special answer, it is the judgment of the Court that the demurrer, in so far as it alleges that the answer does not allege facts sufficient to constitute a defense, be sustained as to the special defense plead in the answer, and unless the defendants shall within *ten days* amend their answer, so as to cure the defects pointed out in this decision, the petition prayed for shall issue as follows:

First, that a writ of mandamus shall issue "ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled."

Second, that a writ of mandamus shall issue "ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees, or other persons acting in his stead, to countersign and approve any check, warrant or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sum of money as represent its share or allotment in the internal revenue collections and in the special tax imposed by Act No. 3065."

That the temporary injunction heretofore issued by the Vacation Justice shall be, and is hereby, made permanent, and in all other respects, the prayer of the petitioner is denied. Neither party to recover costs.

It is so ordered.

CHARLES A. JOHNS

We concur: RAMON AVANCEÑA, GEO. A. MALCOLM, IGNACIO VILLAMOR, NORBERTO ROMUALDEZ.

NOTE.—Mr. Justice Johnson and Mr. Justice Villa-Real took no part in the consideration of this case.

OSTRAND, *J., dissenting:*

I dissent. In my humble judgment, the court has exceeded its jurisdiction in ordering the issuance of the writ of mandamus to the Insular Auditor upon the facts shown by the pleadings.

The Organic Act (Act of Congress of August 29, 1916, the so-called Jones Law) gives the Insular Auditor extensive powers, some of them of a judicial character. Section 24 of the Act provides that he "shall examine, audit, and *settle* all accounts pertaining to revenues and receipts" of the Philippine Government and of the provincial and municipal governments. Section 588 of the Administrative Code, as amended by Act No. 3066, provides that he shall have the power to *enforce the settlement* of "accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, and city governments; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

Section 24 of the Organic Act also empowers the Auditor to summon "witnesses, administer oaths, and to take evidence, and in the pursuance of this provision may issue subpœnas and enforce the attendance of witnesses." The same section, in connection with section 25 of the Act, provides that the Auditor's *decision* "shall be *final and conclusive* upon the executive branches of the Government" subject to an appeal to the Governor-General. (The difference in language between this provision and the corresponding statutory provisions with reference to the powers of Auditors in the United States, is not without significance: here, the statute speaks of the *decisions* of the Auditor; there, it is provided that *the balances which may from time to time be certified by Auditors* . . . shall be final and conclusive upon the executive branch of the Government . . .)

It must be borne in mind that the jurisdiction of territorial courts is not specifically determined by the United States Constitution and that Congress, therefore, in the exercise of its plenary power to provide for the government of territories, may lawfully impose limitations upon the jurisdiction of the Philippine judiciary and if it so sees fit, may invest executive

officers with judicial functions and place corresponding limitations on the jurisdiction of the ordinary courts. This being true, there can, of course, be no question as to the constitutionality of the provision last quoted from the Organic Act and that it must be given full force and effect. It is so clear and positive as to admit of no special interpretation and must be taken to mean exactly what it says, namely, that the Insular Auditor is vested with final and conclusive jurisdiction over questions of accounting between two or more executive branches of the Government, subject only to the right of appeal to the Governor-General. It follows that once the Insular Auditor has taken jurisdiction over a matter of that character, the ordinary courts cannot interfere, at least not until the remedy by appeal to the Governor-General is exhausted.

It is suggested in the decision of the court (1) that neither the City of Manila nor the Metropolitan Water District are executive branches of the Government, and (2) that the subject-matter of the controversy is not an account within the meaning of section 24 of the Organic Act and the Accounting Act by the Philippine Islands. Neither one of these contentions can, in my opinion, be sustained. It is true that the City of Manila, as a chartered city, has certain delegated legislative powers, but so have the ordinary municipal and provincial governments and there can be no question that the handling of funds and matters of accounting are executive functions, and that in regard to such matters the city, as an agency of the Government, must be considered a branch of the Executive Department. Moreover, for administrative purposes the city is under the direct supervision of one of the executive departments, the Department of the Interior. It is further to be noted that both the City of Manila and the Metropolitan Water District are, in their relation to the Insular Auditor, made executive branches of the Government by the provision of section 593 of the Administrative Code, as amended by Act No. 3066.

It is true that in its charter, the Metropolitan Water District is styled a public corporation and in a certain sense so it is. But it is more than an ordinary public corporation; it is also an agency of the Government and vested with gov-

ernmental powers. In common with a municipal corporation it has no stock and it is the successor of the City of Manila in the administration of the water and sewer system by the same right as that which made the chartered City of Manila the successor of the old *Ayuntamiento*. Section 3 of Act No. 2832 as amended provides that certain officers of the Insular Government and of the City of Manila, together with a resident taxpayer to be appointed by the Governor-General, shall compose the District Board, the governing body. All this indicates that the corporation is a branch of the Government. By section 2 (*f*) of Act No. 2832 it is empowered "to construct, maintain, and operate such systems of sanitary sewers as may be necessary for the proper sanitation of the District"; this must be considered a governmental function. It is also empowered to enact such regulations as may be necessary for the sanitary protection of the watershed, reservoirs, and water mains, and for the proper operation of the sanitary sewers, and to fix penalties for the violation of the regulations thus enacted (section 2 (1) of Act No. 2832). Certainly the power to enact coercive regulations and to provide and impose penalties is a governmental function and a prerogative or attribute of the State.

It is further to be noted that the corporation is by law placed under the control, direction, and general supervision of the Secretary of the Interior; that is, employees are all under the civil service regulations; and that all of its accounts are audited by the Insular Auditor. As already stated, in its relations to the Insular Auditor it is also made an executive branch of the Government by section 593 of the Administrative Code as amended. In these circumstances it can hardly be seriously contended that it is not a branch of the Government or a governmental agency.

Neither will the assertion that the claim of the Metropolitan Water District against the city is not an account survive an examination. In its ordinary acceptation the word "account" denotes a statement of debits and credits. The number of items in the statement does not affect its character as an account. Bouvier, citing authorities, says:

"An open account is one in which some term of the contract is settled by the parties, whether the account consists of one item or many."

The fact that all the credit items are in favor of the party who presents the statements is immaterial; accounts need not necessarily be mutual. In the language of the Court in the case of Donley *versus* Bailey (48 Col. 373):

"The word 'account' has various meanings, and is used in a variety of ways and senses . . . An account arises out of contract or some fiduciary relation. Its ordinary commercial usage is to refer to a claim or demand growing out of the sale of goods, performance of services, and the like. When used alone, without words of limitation, extension, qualification, or explanation, it is sometimes equivalent to the word 'claim' or 'demand,' when referring to an indebtedness arising out of contract or some fiduciary relation." (Citing Morrisette *vs.* Wood, 128 Ala. 503; So. Kan. Ry. Co. *vs.* Gould, 44 Kan. 68.)

In this case we have the following situation: The Metropolitan Water District has rendered certain services to the city for the benefit of its inhabitants; the city has accepted the services and its liability, if any, to pay for them is necessarily founded upon an implied contract. The Water District has from time to time presented its statements of the services and charges to the city and for auditing purposes these statements, arising, as they do, out of an implied contract, are accounts. It is to be observed that the city does not dispute the correctness of the statements, but simply denies *in toto* its liability to pay for services received. But the fact that the party to whom an account is rendered denies his liability for items arising out of a contract express or implied, does not affect the character of the account as such; it is precisely in regard to disputed items that the judicial or quasi-judicial functions of the Insular Auditor are exercised. I am not here speaking of items involving claims for damages or other matters arising *ex delicto*.

As far as I can see there can therefore be no question that for accounting purposes the Insular Auditor had original and the Governor-General appellate jurisdiction over the mat-

ter here in controversy. By holding that the courts may intervene before the Governor-General has had an opportunity to pass upon the decision or ruling of the auditor, this court virtually deprives him of his appellate jurisdiction and it seems to me that the principle announced by the United States Supreme Court in the case of Baltimore & Ohio Railroad Company *versus* Pitcairn Coal Co. (215 U. S. 481) is fully applicable to the present case. That case involved a question of alleged unjust discrimination in the distribution of coal cars by the railroad company, a matter within the administrative jurisdiction of the Interstate Commerce Commission. Instead of going to the Interestate Commerce Commission, the complainant, the Pitcairn Coal Co., filed a petition in mandamus in the United States Circuit Court for the District of Maryland. That court granted the petition and ordered the issuance of the writ in reliance on section 23 of the Interstate Commerce Act (Act of Congress of February 4, 1887) which reads as follows:

"SEC. 23. That the Circuit and District Courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act of which this is a supplement and all acts amendatory thereof as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be

held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement."

Upon appeal, the Supreme Court reversed the decision of the Circuit Court and held that the courts could not interfere by writ of mandamus until after the matter in controversy had been acted on by the Interstate Commerce Commission. Speaking through Chief Justice White, the Court said:

"When the situation is thus defined we see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission and not subject to be judicially enforced, at least until that body, clothed by the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions."

The practical considerations informing the decision in the Pitcairn Coal Co. case exist to an equal extent in the present case. It is further to be observed that in the former case the courts were expressly authorized by law to issue writs of mandamus to common carriers in matters falling within the administrative jurisdiction of the Interstate Commerce Commission; here, the Insular Auditor and the Governor-General are by Act of Congress expressly given *exclusive* and *conclusive* jurisdiction over accounts between the various branches of the Government, which, as we have seen, includes the Metropolitan Water District as well as the City of Manila. In this respect, at least, this case is more favorable to the respondents.

The object of Congress in conferring exclusive jurisdiction over such accounts upon administrative or executive officials is sufficiently obvious: It can manifestly serve no useful purpose to have the various executive branches of the Government waste energy, money and time in more or less futile litigation in regard to matters of accounting; they are all agencies of the same Government and in the last analysis subsisting on Government funds. The Governor-General is vested with "the supreme executive power" (Organic Act, section 21) and by himself and through his subordinates, is ordinarily in a better position than are the ordinary courts

to adjust differences between such agencies as to disposition of funds and the accounting therefor.

If this court can by mandamus deprive the Chief Executive of any of his constitutional prerogatives, the courts of first instance can do likewise. That this will not make for efficiency in administration, but will cause confusion and in cases such as the present tend to disrupt the government accounting system can hardly be doubted. Congress in the exercise of its plenary powers over territorial governments has deemed the appeal to the Governor-General an adequate mode of testing the validity of the decisions of the Insular Auditor and has made the remedy exclusive and its views should be respected by this court.

The majority opinion contains various statements which may create erroneous impressions. It is thus asserted that the ruling of the Auditor in this case was not delivered upon due process of law. In regard to this it may be observed that the point is not raised by the petitioner and that the presumption is that the proceedings were regular. In these circumstances the burden is not on the respondents to show affirmatively that there was due process of law. As far as the record shows the process may have been sufficient. The answer alleges that the Insular Auditor, "after due study of the claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that the claim was just, legal, and proper," and that he thereupon "made demand upon the City of Manila for the payment and settlement of the claim, advising the city that upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code as amended by section 1 of Act No. 3066, but the city refused to comply with said demand." This would seem to indicate that the parties were heard before the ruling was made. There is nothing to the contrary in the pleadings. Summary processes are not necessarily unjust or unconstitutional or open to the objection that they deprive persons of their property without due process of law (McMillen *vs.* Anderson, 95 U. S. 37).

The statement that the money claimed by the city "was assessed, levied, and collected for a specific purpose and for

such reason it should 'be treated as a special fund in the treasury and paid out for such purpose only' " is likely to be misunderstood. The money consists of so-called provincial and municipal allotments. Two-thirds of the city's allotments accrues to its general funds and may be made available for the payment of the account of the Metropolitan Water District (sections 491, 492, 494, and 495 of the Administrative Code).

The money is now in the Insular Treasury as a credit in favor of the city and there is some merit in the contention that the Auditor has no power to order it paid directly from the Treasury to the Metropolitan Water District without a previous appropriation by the Municipal Board, and if this court had jurisdiction of the case, it would no doubt have the power to issue a writ of injunction to the Insular Treasurer restraining him from making such payment. But that does not necessarily mean that the Insular Auditor may not decline to countersign a warrant for the transfer of credits from the Insular Treasury to a Government agency who fails or refuses to meet its financial obligations to another Government agency; that is another and entirely different matter.

By section 588 of the Administrative Code as amended by Act No. 3066, the Insular Auditor is empowered to *enforce* the settlement of accounts subsisting between the various Government agencies. He cannot issue writs of mandamus or injunctions and, as far as I can see, the only means within his reach for enforcing settlement of such accounts by a recalcitrant Government agency, is to prevent the transfer to it of credits in the Government treasury which might otherwise be made available for the payment of the accounts. A debt to an agency of the Government may be said to be in effect a debt to the Government itself and it seems reasonable to require that before the debtor can demand payment of his credits from the Government, he must make provisions for paying the debt. In these circumstances, can the Insular Auditor be compelled by mandamus to lend his coöperation to the transfer of such credits to a defaulting debtor and thus incur the risk of having them dissipated for other purposes before any attempt is made to pay the debts? I do not think that such a state of affairs can have been contemplated either by Congress or by the Legislature.

I may say further that unless Act No. 2832, the Charter of the Metropolitan Water District, is unconstitutional—and I do not think it will be so held—the excuse offered by the city for not settling the account here in question is to my mind nothing but a flimsy pretext. If the city upon such pretexts can prevent the Insular Auditor from exercising his functions, other Government agencies may do the same, and the result can be nothing but confusion and delay in the settlement of Government accounts. An Act of the Legislature is presumed to be valid and until it is shown to be otherwise, the Auditor is justified in following its provisions. If the city desires to test the constitutionality of the statute in question, it should be required to do so by an action at law before being permitted to use the alleged unconstitutionality as an excuse for the non-payment of its debt.

Much more might be said in regard to the merits of the case, and the temptation to do so is strong, but for the sake of brevity I shall refrain from further discussion. Suffice it to say that the errors alleged to have been committed by the Insular Auditor might have been corrected by an appeal such as provided for in the Organic Act. We have no right to presume that the Governor-General would not have given due consideration to the petitioner's claim if they had been properly brought to his attention upon such appeal.

By way of recapitulation, my conclusions are that this court has no jurisdiction to entertain a petition such as that in the present case before the remedy of appeal to the Governor-General has been exhausted; that while the Insular Auditor may not have the power to order that the funds here in question be paid to the Metropolitan Water District without a previous appropriation by the Municipal Board of Manila, he may nevertheless in the exercise of his power to enforce settlement of a disputed account decline to countersign a warrant for the transfer of the funds from the Insular Treasury to the city; that assuming without conceding that the court has jurisdiction over the case, it can only enjoin the Insular Treasurer from paying the funds to the Metropolitan Water District without previous appropriation, but has no power to compel the Insular Auditor to countersign a warrant for the transfer of the funds to the city; and that

the court in assuming jurisdiction over the case has in effect undertaken to deprive the Chief Executive of jurisdiction expressly conferred upon him by constitutional statutes and has to that extent committed an encroachment upon the domain of a coördinate department of the Government, and has arrogated to itself powers not conferred on it by Law. I do not maintain that a decision of the Insular Auditor or of the Governor-General would be conclusive as to the *title* to the property in dispute between the city and the Water District.

JAMES A. OSTRAND
Associate Justice

STREET, *J.*, concurring in the result:

As a matter of practice, I should have preferred to overrule the demurrer to the answer, requiring the parties to submit the cause on an agreed statement of facts or upon such proof as they might have seen fit to adduce before our commissioner. The majority, however, find sufficient admissions in the answer to define the issues; and as the parties may be supposed to be desirous of having the case settled speedily on the merits, I waive my views on this point.

Confining myself to the principal features of the case, I will say that the so-called "special defense" contained in the answer and the accompanying exhibits show in my opinion that the City of Manila is liable for the value of the water supplied to it by the Metropolitan Water District for use in fighting fires and sprinkling streets. All administrative officials, whether supporters of the city in the present contention or not, have so assumed; and this is in conformity with justice and the letter of the law. I am further of the opinion that the administrative authority of the Auditor over the Metropolitan Water District is co-extensive with his authority over the city and other branches of the public service; and he has the same power to enforce the settlement of accounts with respect to this entity as he has with respect to provinces and chartered cities. It seems to me, however,—and upon this decisive point I concur with the majority,—that the power to enforce the settlement of accounts does not include the power to divert funds from the city treasury in the man-

ner now threatened. The Insular Auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts however meritorious the obligation; and if he does not have this power he cannot intercept and divert funds in course of transmission to the city. Lastly, it is my opinion that the provision of section 3 of the Jones Law which declares that the money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only is not pertinent to the case, since the money with which we are now dealing was not levied or assessed for a special purpose. The revenue allotments are taken from the general fund in the Insular Treasury, collected under general laws; and said allotments accrue to the general funds of the city, except as to one-half of the municipal allotment, which is applied by law to the school fund of the city. (See secs. 490, 492, 494, Admin. Code.) Of course this part of the allotment to the city could not in any event be diverted by the Insular Auditor to the payment of the city's indebtedness to the Metropolitan Water District.

THOS. A. STREET

On December 2, 1925, the respondents by their attorney filed with the Supreme Court the following exception to the above decision and motion for reconsideration thereof:

[CAPTION AND TITLE OMITTED]

EXCEPTION AND MOTION FOR RECONSIDERATION

Come now the respondents in the above-entitled action and to the Honorable Court respectfully state that they are unable to amend their answer; and, praying that the decision rendered in the present case be accordingly considered final, they except to said decision and move the court for a reconsideration of same upon the grounds that the admitted facts are insufficient to justify said decision and that it is contrary to law.

Manila, December 2, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 2nd day of December, 1925.

CITY FISCAL
Attorney for Petitioner
By (Sgd.) JOSE MA. PAREDES

On December 3, 1925, the Supreme Court adopted the following resolution:

Considering the motion of the Attorney-General filed in case G. R. No. 23551, the City of Manila *versus* Juan Posadas *et al.*, excepting to the decision rendered therein and praying that the same be reconsidered, *exception noted* and motion for reconsideration *denied*, Ostrand, *J.*, dissented, and Johnson and Villa-Real, *JJ.*, took no part.

On December 7, 1925, the respondents filed with the Supreme Court the following exception and motion for stay of execution of judgment:

[CAPTION AND TITLE OMITTED]

Come now the respondents and except to the resolution of this Court denying their motion for reconsideration of the decision rendered in the above-entitled action, and also except to the final judgment entered therein.

Notice is hereby given that the respondents intend to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Court in the present case.

Respondents respectfully pray for a stay of execution of the judgment rendered herein during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States.

Manila, December 7, 1925.

DELFIN JARANILLA
Attorney-General

Received copy this 7th day of December, 1925.

CITY FISCAL
Attorney for the petitioner

On December 16, 1925, the Supreme Court passed the following resolution:

Upon consideration of the motion of the respondents filed in case G. R. No. 23551, The City of Manila *versus* Juan Posadas, Jr., *et al.*, excepting to the decision of this court in denying their motion for reconsideration as well as to the final judgment; giving notice of their intention to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and praying for a stay of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States, and after considering the petitioner's objection thereto; it is ordered that the exception be noted, and a stay of the mittimus or of the execution of the judgment heretofore entered therein is hereby granted. Johns, J., dissented.

On December 21, 1925, the Supreme Court entered the following final judgment:

[CAPTION AND TITLE OMITTED]

The court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the twenty-fourth day of November, A. D. nineteen hundred and twenty-five:

By virtue thereof it is hereby adjudged and decreed that the demurrer, in so far as it alleges that the answer does not allege facts sufficient to constitute a defense, be sustained as to the special defense plead in the answer, and unless the defendants shall within ten (10) days amend their answer, so as to cure the defects pointed out in this decision, the petition prayed for shall issue as follows:

First, that a writ of mandamus shall issue "ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled";

Second, that a writ of mandamus shall issue "ordering the respondent BEN F. WRIGHT, Insular Auditor, his deputies, agents, employees or other persons acting in his stead, to countersign and approve any check, warrant or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sum of money as represent its share or allotment in the internal revenue collection and in the special tax imposed by Act No. 3065."

That the temporary injunction heretofore issued by the Vacation Justice shall be, and is hereby, made permanent, and in all other respects, the prayer of the petitioner is denied. Neither party to recover costs.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

Certified correct:

V. ALBERT
Clerk, Supreme Court, P. I.

On February 26, 1926, upon motion of the respondents Juan Posadas *et al.*, the Supreme Court passed the following resolution:

Upon consideration of the motion of the Attorney-General filed on behalf of the respondents in case R. G. No. 23551, The City of Manila *vs.* Juan Posadas, Jr., as Collector of Internal Revenue, *et al.*, praying, for the reasons given, that this Court enter an order for the stay of the execution of the final judgment entered therein on December 21, 1925, motion granted.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. Albert, clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing

ninety-one (91) printed pages contain a true and correct transcript of the record of the case entitled City of Manila *versus* Juan Posadas, Jr., Collector of Internal Revenue, *et al.*, concerning a petition for *mandamus*, bearing No. 23551 of the General Register of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 4th day of ...March....., A. D. nineteen hundred and twenty-six.

V. ALBERT
Clerk, Supreme Court of the Philippine Islands

○

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 1, 1926

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2377)